International Labour Conference
87th Session 1999

Report IV (2A)

Child labour

International Labour Office Geneva

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INTRODUCTION

The first discussion of the question of child labour took place at the 86th Session (1998) of the International Labour Conference. Following that discussion, and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office prepared and communicated to the governments of member States a report [1] containing a proposed Convention and a proposed Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour, based on the conclusions adopted by the Conference at its 86th Session.

Governments were invited to send any amendments or comments they might wish to make so as to reach the Office by 30 November 1998 at the latest, or to inform it, by the same date, whether they considered that the proposed texts constituted a satisfactory basis for discussion by the Conference at its 87th Session (1999).

At the time of drawing up this report, the Office had received replies from the governments of the following 83 member States: [2] Argentina, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium,[3] Benin, Bolivia, Botswana, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Haiti, Hungary, India, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Madagascar, Malaysia, Mali, Mauritius, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic,[4] United Republic of Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Yemen, Zambia, Zimbabwe, as well as from the Holy See.[5]

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, governments were requested to consult the most representative organizations of employers and workers before finalizing their replies and to indicate which organizations were consulted.

The governments of the following 49 member States stated that the most representative organizations of employers and workers had been consulted: Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Finland, France, Germany,

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[1] ILO: *Child labour*, Report IV(1), International Labour Conference, 87th Session, Geneva, 1999.

[2] Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

[3] The Government of Belgium sent with its reply an opinion from the National Labour Council (CNT).

[4] The Ministry of Social Affairs and Labour responded for the Government. The Ministry of Industry provided comments in its capacity as an employer in the public sector of industry.

[5] The Holy See has observer status with the ILO.

Greece, Hungary, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Republic of Korea, Latvia, Mauritius, Myanmar, Netherlands, New Zealand, Norway, Portugal, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Togo, Turkey, United Arab Emirates, United Kingdom, United States, Venezuela, Zimbabwe.

In the case of the following 37 member States the replies of employers' and workers' organizations were incorporated into those of the government, were appended or were communicated directly to the Office: Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Republic of Korea, Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Turkey, United States, Venezuela, Zimbabwe.

The United Nations Committee on the Rights of the Child formulated comments during its 20th Session. These are summarized below.

To ensure that the English and French texts of the proposed Convention and proposed Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour are in the hands of the governments within the time-limit laid down in article 39, paragraph 7, of the Standing Orders of the Conference, these texts have already been published in a separate volume, Report IV (2B), that has been sent to them. The present volume, Report IV (2A), which has been drawn up on the basis of the replies from governments and from employers' and workers' organizations, contains the essential points of their observations. It is divided into three sections: the first comprises their general observations on the proposed texts, while the second and third sections contain their observations on the proposed Convention and proposed Recommendation, with the Office commentaries on these observations.

REPLIES RECEIVED AND COMMENTARIES

The substance of the replies received on the proposed Convention and the proposed Recommendation concerning child labour is given below. The replies are followed, where appropriate, by brief Office commentaries.

The governments of the following 35 member States stated that they had no observations to put forward at the moment or that they considered that the proposed texts constituted a satisfactory basis for discussion at the 87th Session of the International Labour Conference: Belarus, Belgium, Bulgaria, Cape Verde, China, Colombia, Cyprus, Finland, France, Hungary, Ireland, Kenya, Kuwait, Latvia, Lebanon, Mali, Myanmar, Netherlands, New Zealand, Peru, Poland, Qatar, Romania, Saudi Arabia, Slovakia, Switzerland, United Republic of Tanzania, Thailand, Togo, Ukraine, United Arab Emirates, United Kingdom, United States, Yemen, Zambia. Some of the countries which considered the texts a satisfactory basis for discussion also commented on the texts and replied to the questions raised in the Office commentary in Report IV (1).

General observations

AUSTRALIA

The Government supports the adoption of a Convention, supplemented by a Recommendation, concerning the prohibition and elimination of the worst forms of child labour. It is important that distinct attention be given to the most extreme and serious part of this problem and the proposed Convention and Recommendation should provide a focal point for achieving this. The new Convention should be flexible and not overly prescriptive to ensure that there are no obstacles to ratification among ILO member States. The Convention should also be concisely stated, principles-based, and clearly focused on extreme forms of child labour. The Government also supports a Recommendation that would provide guidance for member States on the implementation of the Convention. However, the provisions of the proposed Recommendation should not be regarded as compulsory. Member States should have some flexibility as to the way in which the Convention is implemented.

BAHRAIN

The title of the instrument should be "Prohibition of child labour", "Elimination of child labour" or "Prohibition and elimination of child labour". The expression "immediate abolition of the worst forms of child labour" is ambiguous and raises many questions, as it is aimed at banning the worst forms of child labour yet allows everything else. Furthermore, what constitutes unacceptable and acceptable work is open to disagreement. If the proposed Convention seeks to protect children by prohibiting work for those below a given age, the prohibition should be comprehensive to achieve protection. For countries which have difficulties in applying the prohibition overnight,

it should be gradually implemented within a given time frame. In light of progress reports, this period could be extended or adapted to take into account the conditions of a given region or country. On the eve of the third millennium, the ban should not be restricted to "the worst forms of child labour", but to all forms of employment, because child labour is a serious threat to the future of humanity. A child must be able to learn and develop, and therefore work should be prohibited. Children have only one childhood to live and they cannot wait. If humanity is to give them the best it has to offer, it must be now. The ILO should make combating child labour its top priority, supported by the adoption of a clear and transparent Convention that calls for the elimination of child labour.

BELGIUM

National Labour Council (CNT). New instruments focusing on the worst forms of child labour are needed. These instruments should rely on the Minimum Age Convention, 1973 (No. 138), which remains one of the core ILO Conventions and a key instrument in the fight against child labour. The proposed new Convention should deal with the fundamental principles of the fight against the most extreme forms of child labour.

BOLIVIA

Both a Convention and a Recommendation should be adopted. While there is legislation in Bolivia on work that is prohibited for children, it is barely enforced, if at all. More than laying down standards, child labour policies should be aimed at enforcing them. Policies to prohibit and eliminate the worst forms of child labour should also be aimed at offering options through programmes to protect the child's psychological and social development. Without such real and effective protection, efforts could be counterproductive and increase the clandestine nature of child labour and hence the exploitation of children.

BRAZIL

National Confederation of Commerce (CNC). The employers on the Committee on Child Labour were satisfied with the high quality of the debates and the progress made during the first discussion. However, this was with the reservation that the instruments should be concise, simple, focused, realistic and easy to understand, so that they can receive wide support and be ratified by the highest possible number of member States, both developed and developing. In short, the texts deserve the employers' support. Some questions remain, however, which should be resolved with a view to a flexible Convention which gives the greatest opportunity for ample ratification by member States.

BULGARIA

The Government considers positively the texts of the proposed Convention and proposed Recommendation.

CANADA

Canada gives overall support for the intent and principles of the proposed instruments. However, in view of the Government's commitment to a clear and concise Convention that can be ratified and implemented by Canada and a large number of member States, it raises a number of questions on the proposed text below.

Canadian Labour Congress (CLC). The CLC agrees that however well discussions at the 1998 Session of the International Labour Conference proceeded, many challenges remain. There are a number of weaknesses in the current text of both the proposed Convention and the proposed Recommendation concerning access to basic education, the definition of hazardous work and enforcement. The potential for "watering down" tripartism is also a serious concern.

CHILE

Chile takes a positive view of the proposed text, which represents the spirit of the United Nations Convention on the Rights of the Child and reflects a considerable effort and contribution to child protection.

CROATIA

The Government fully supports the adoption of new instruments concerning the prohibition of child labour.

Croatian Association of Employers. The Association agrees with the proposed texts and stresses the importance of education in the complete elimination of child labour, which is a long-term objective. It is necessary to concentrate on developing instruments that could directly influence the elimination of extreme forms of child labour. Such instruments should be practical and capable of being effectively applied in countries in transition and in industrialized countries, taking into account supervision and implementation.

Union of Autonomous Trade Unions of Croatia (SSSH), Confederation of Independent Trade Unions of Croatia (KNSH), Croatian Association of Trade Unions (HUS), Federation of Croatian Trade Unions of Public Services (MATICA).[1] The amendments that were made to the texts subsequent to the 86th Session of the International Labour Conference are accepted.

CZECH REPUBLIC

Provisions concerning the prohibition and immediate elimination of extreme forms of child labour contained in both instruments will markedly contribute to the protection of the rights of the child.

DENMARK

It is unclear how the proposed Convention should be delimited in relation to the proposed Recommendation.

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[1] Hereinafter referred to as the Working Group of Trade Union Confederations.

Egypt

The proposed Recommendation should be annexed to the proposed Convention and not supplement it, since the application of the proposed Convention together with the proposed Recommendation would contradict article 19 of the ILO Constitution, which stipulates that a Recommendation is not binding for States which have ratified the Convention to which it is attached, but is only for guidance. Moreover, the proposed Recommendation includes small details which may obstruct ratification of the proposed Convention by a number of States, and hence the purpose of the proposed Convention would not be fulfilled. The Government supports the text of the proposed Recommendation; however, the "worst forms of child labour" referred to in the proposed Convention under Article 3(a), (b) and (c) do not exist in Egypt in the work environment.

Federation of Egyptian Industries. The Federation supports the proposed Convention and Recommendation because the goals in the Preamble are widely echoed in the policy of the Federation and its continuous efforts to protect children.

El Salvador

The proposed text reflects the debate that took place during the first discussion. The Government agrees with it, with a few minor proposed modifications.

Estonia

Estonian Association of Trade Unions. The phrase "abolition of the worst forms of child labour" is preferred over "the prohibition and immediate elimination of the worst forms of child labour" as it is more precise, shorter and clearer, and has also been used in relation to earlier ILO labour standards, such as the abolition of forced labour.

Finland

The changes made by the Office are essentially technical in nature and intended to clarify the meaning and assist in the interpretation of the texts. Finland completely agrees with the need to deal with the prohibition and immediate elimination of the worst forms of child labour. However, providing appropriate opportunities for young people to gain work experience should not be condemned. The proposed Convention and Recommendation do not address the use of the Internet in the exploitation of children, for example paedophilia and the sale and trafficking of children. The international community should investigate ways to intervene more effectively in such activities. The complexity of the problem must not prevent research or the development of international cooperation to find a solution.

Confederation of Finnish Industry and Employers (TT) and Employers' Confederation of Service Industries in Finland (PT). Children's participation in working life has a long history and deep cultural roots in many countries. Such participation also has implications for the economic development of these countries. It would therefore be a mistake to seek to ban all forms of work by children. Attention should rather be focused on extreme cases and the forms of work which are most harmful to the well-

being of children. The ILO's existing instruments already cover these worst forms of labour. The demands imposed by these instruments are, however, unrealistically high for many countries, which has resulted in a low level of ratification. It is therefore particularly important to keep the demands realistic.

Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK) and Confederation of Unions for Academic Professions (AKAVA). The proposed Convention and Recommendation and some of the changes proposed by the Office form a good basis for the decisive second discussion. The SAK, STTK and AKAVA support the use of the expression "worst forms of child labour" rather than "extreme" or "intolerable" and the proposed title "Convention concerning the prohibition and immediate elimination of the worst forms of child labour", as it clearly and immediately indicates the content of the proposed Convention.

FRANCE

The Government wholly supports the proposed new instruments on the elimination of the worst forms of child labour. France has always agreed with initiatives aimed at the eradication of child labour within the framework of relevant ILO standards, and has very protective national legislation regarding the work of persons under the age of 18. The proposed instruments should not replace but should be consistent with Convention No. 138, which should remain the fundamental ILO Convention for the abolition of child labour.

Movement of French Enterprises (MEDEF). The MEDEF considers favourably the implementation of an international legal instrument on the worst forms of child labour. The content of the texts for the proposed Convention and Recommendation remains very much in line with the texts submitted for discussion to the 86th Session (1998) of the International Labour Conference. However, the draft text of the proposed Recommendation continues to pose a problem of compatibility with the French legislation governing apprenticeships.

GERMANY

The proposed text is an appropriate basis for the adoption of instruments that will enable as many member States as possible to make an international commitment to eliminate, as soon as possible, the worst forms of child labour.

Confederation of German Employers' Associations (BDA). The BDA favours adopting standards for the immediate abolition of the worst forms of child labour. Such a standard-setting measure will establish a meaningful and important priority in the worldwide fight against child labour. The proposed texts are a usable basis for discussions at the 87th Session of the Conference. The purpose of the proposed Convention should be to define the worst forms of child labour and the measures required for their immediate elimination clearly and realistically enough to make their implementation and ratification a feasible and desirable goal for a large number of ILO member States. The proposed Recommendation should suggest practical and relevant measures for implementation.

HAITI

The texts of the proposed Convention and Recommendation have been positively received by the Government, employers' and workers' organizations. The document constitutes a very satisfactory basis for discussion and reflects appropriately the relevant resolutions adopted by the member States of the ILO, which are fully supported by the Government.

INDIA

Child labour is one of the most serious violations of children's rights. Child labour is not only a social problem but also an economic one. In addition to compulsory schooling, empowerment and economic betterment of the poor parents are also considered essential to eliminate this social evil. The problem needs to be addressed in a very comprehensive manner and effective measures to eliminate child labour have to be taken in a phased manner. It was in this context and spirit that the Government supported the ILO's initiative to adopt fresh instruments to eliminate the worst forms of child labour immediately. Although reservations relating to Article 3 exist, the Government generally supports the proposed text of the Convention and Recommendation.

INDONESIA

The instrument should be in the form of a Recommendation, therefore comments are made only on the proposed Recommendation. Paragraphs 1 to 15 of the proposed Recommendation constitute a satisfactory basis for discussion. However, further amendments or comments from the respective parties may be submitted during the second discussion.

IRELAND

Irish Congress of Trade Unions (ICTU). The Preamble of the proposed Convention states that Convention No. 138 remains the fundamental ILO instrument on child labour and that the new Convention should complement Convention No. 138, which sets 18 as the minimum age for hazardous work. The wording of the new Convention should not in any way set a lower standard than that established in Convention No. 138, and there should be consistency between the provisions of the two Conventions. There was insufficient time for a thorough discussion on the proposed Recommendation at the 1998 Session of the Conference owing to the length of time taken for the debate on the proposed Convention. References are welcomed to the need for clear requirements for action in the national programmes to remove and rehabilitate child labourers and ensure their access to basic education, the use of penal and other sanctions for violations, the need for special attention to the situation of girls and the need for international cooperation to implement the Convention. See also comments under Articles 2 and 7(2)(b).

Services Industrial Professional Technical Union (SIPTU). The Union is pleased that the emphasis advocated on eliminating the forms of exploitation that particularly affect girl workers has been adequately reflected in the proposed text. It is also pleas-

ing that the particular problems created for young domestic workers whose work is often invisible and does not allow for the possibility of returning home each day has been fully recognized as a form of hazardous work to be made subject to the provisions of this Convention. It is further noted that the request for measures to ensure, at the national level, that children who are victims of the worst forms of child labour have easy access to ombudspersons and SOS telephone lines has been reflected in Paragraph 14(g) of the proposed Recommendation. As an Irish supporter of the Global March Against Child Labour, the SIPTU urges governments to give absolute priority to the immediate elimination of the worst forms of child labour; to set up, without delay, national commissions that are entrusted with the task of creating the infrastructure necessary for the implementation of the proposed Convention; and to ratify the Convention at the earliest opportunity.

ITALY

The texts, following the deliberations of the 86th Session of the Conference, have been substantially improved. Fundamental passages, such as the recognition of free basic education as an instrument to achieve the rehabilitation and social reintegration of child workers and as an alternative to involvement in work, are now included in the text at the end of the Preamble. Equally fundamental is the recognition that the ultimate objective of the instruments being adopted, together with the Minimum Age Convention and Recommendation, 1973, is the total elimination of child labour. Another important and fundamental aspect is the recognition of the particularly serious situation of girls, the exploitation of whom is often hidden in homes, and which escapes the public monitoring and censure it deserves because it is justified by usage, customs and practices, which make it no less reprehensible. Since the issue of child soldiers was not resolved during the first discussion, the Government notes with satisfaction that countries are being asked specific questions on the matter.

Italian General Confederation of Employers in Commerce, Tourism and Services (CONFCOMMERCIO). The Confederation highlights its considerable interest in the proposed Convention and Recommendation and concurs with the content in general and the amendments approved by the Committee on Child Labour.

Italian General Confederation of Labour (CGIL), Italian Confederation of Workers' Unions (CISL) and Italian Labour Union (UIL). These organizations welcome the general outcome of the first discussion.

JAPAN

Solving the problem of child labour is one of the most important tasks imposed on the entire world society. Efforts are being made by international organizations, including the United Nations, to develop international instruments and promote technical cooperation. The Government also recognizes the need to make an active contribution to the solution of this problem. Under such circumstances, it seems appropriate for the ILO to adopt international instruments for the immediate elimination of the worst forms of child labour. This will encourage efforts to eliminate child labour in many countries and will enable technical cooperation activities of international organizations, including the ILO, to be more effective. The ILO should facilitate effective

measures consistent with the activities of other international organizations, including those of the United Nations working group on the draft optional protocol to the Convention on the Rights of the Child, to avoid excessive administrative burdens, duplication and confusion in each country. The new instruments should focus on areas where the ILO can use its expertise and should cover fundamental matters that can be easily applied by member States.

Japan Federation of Employers' Associations (NIKKEIREN). The Federation supports the Government's comments. The Convention should provide only basic minimum principles to ensure universal ratification and application.

Japanese Trade Union Confederation (JTUC-RENGO). The Confederation supports the proposed texts and recognizes the importance of adopting a Convention and Recommendation aimed at combating child labour, which is a universal problem requiring an immediate solution.

JORDAN

Amman Chamber of Industry. Countries will need time after the adoption of the proposed Convention and Recommendation to determine what work a child may undertake, to adapt to the requirements of the instruments and amend legislation if necessary. This could take two to four years.

Federation of Jordanian Chambers of Commerce. The proposed Convention completes the provisions of Convention No. 138 and requires immediate measures to suppress the most oppressive forms of child labour, while the proposed Recommendation contains guidance for steps to be taken. The main purpose of Convention No. 138 is to abolish child labour completely, which takes time, while the proposed Convention deals with certain forms of child labour that cannot be condoned, such as forced labour, dangerous work, prostitution and pornography. It should be noted that any income earned by a child or any member of a family, especially in most developing countries, is a source of livelihood for the whole family.

KENYA

Central Organization of Trade Unions (COTU). The general impact of the proposed Convention is that it covers the "worst forms" of child labour as contained in Convention No. 138, which is less focused. The wording in the new Convention should not provide room for flexibility by setting a lower standard than that laid down in Convention No. 138.

REPUBLIC OF KOREA

The Government strongly supports the ILO's endeavour to eliminate the worst forms of child labour and protect the basic human rights of children. The proposed Convention and Recommendation, which are the products of the heated debates and sincere explorations by representatives from governments and workers' and employers' organizations throughout the world, embody the representatives' commitment to abolishing the worst forms of child labour. However, to make this universal desire a reality, a large number of countries must be able to ratify and implement the proposed

Convention and Recommendation. This factor should, without fail, be considered in the second discussion.

Federation of Korean Trade Unions (FKTU). The FKTU has no special observation on the proposed Convention and Recommendation. However, recalling that the embargo in the early 1990s on the import of Pakistani carpets, imposed by industrialized countries as a way of eliminating the use of Pakistani children for weaving carpets, forced hundreds of thousands of child carpet weavers into the street, the FKTU emphasizes that industrialized countries and international organizations need to give support to building facilities and programmes for education.

Kuwait

The proposed texts appear to complement the Minimum Age Convention and Recommendation, 1973, and the United Nations Convention on the Rights of the Child, adopted in 1989, as well as all other international conventions on the subject. The proposed texts were established to eliminate all forms of child labour which could, owing to the conditions in which such work is performed, place children at risk or endanger their health, safety or psychological well-being. Consequently, as the texts of the proposed Convention and Recommendation are among national and international priorities, they are an adequate basis for discussion.

Malaysia

The general nature of the provisions in the proposed Convention would provide flexibility to enable ratifying States to formulate their own policies and legislation, thereby encouraging wide ratification. In the absence of a comprehensive definition for Article 3(d), for example, the wide variations among member States concerning health and safety standards based on facilities, technical expertise, enforcement capacity, level of economic development and other social and cultural factors will have an impact. Due consideration should be given to these factors and a flexible approach should be adopted when evaluating the compliance of member States with the Convention. The ILO has a key role in helping member States to comply through its technical cooperation programmes and other relevant means.

Mali

The Government fully supports the ideals embodied in the texts of the proposed Convention and Recommendation and considers them a solid basis for discussion.

Mexico

Many of the activities referred to as the "worst forms of child labour" in the proposed instruments do not constitute child labour, but are crimes against children, and therefore come under criminal law. A distinction should be drawn between exploitation of children and economic exploitation of children's labour, as is done in the United Nations Convention on the Rights of the Child (articles 32 to 35). The former concept comes under the criminal law of each State and the latter falls within the labour sphere. Action against the exploitation of children is being carried out by the

United Nations Commission on Human Rights, UNICEF and Interpol. To adopt provisions on the matter could result in a duplication of efforts and contradictions between the ILO and Interpol and other agencies. The inclusion of a large number of criminal aspects in the proposed Convention could lead to problems in application and contradictions, and thus constitute an obstacle to ratification. The ILO should therefore focus its efforts on work which jeopardizes the safety and health of children. Situations which constitute criminal offences rather than labour should be eliminated from the definition. The need for flexibility and realism has been highlighted. To this end the instruments should define the "worst forms of child labour" as forced or compulsory labour, debt bondage and serfdom; and any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children. The instruments should then fix the minimum age, hours and conditions of work and the application of penalties, and in doing so take account of the provisions on child labour in the legislation of each State. Moreover, the instrument adopted should be a Recommendation. Explicit reference to "immediate elimination" of the worst forms of child labour could constitute an obstacle to ratification, since States vary in their level of development and cannot commit themselves to this objective. A more realistic solution would include requiring States to take the necessary measures to prohibit immediately and eliminate progressively the worst forms of child labour. The experience of the International Programme on the Elimination of Child Labour (IPEC) shows that elimination is a process which includes different phases in the short, medium and long term. "Immediate" should therefore be inserted before "prohibition" and "progressive" before "elimination" wherever they occur, so that reference is made to "immediate prohibition and progressive elimination".

Morocco

The proposed Convention should be modified on certain points.

Netherlands

While the proposed texts are a solid basis for discussion at the 87th Session of the Conference in June 1999, the proposed Convention could be improved. For instance, not only social partners, but also other non-governmental organizations (NGOs) have an important role to play in the elimination of the worst forms of child labour. The worst forms of child labour are often invisible and located in the informal sector where the possibilities for intervention by "official" social partners are limited. Especially in these situations the full efforts of other concerned groups, provided they have sufficient support, credibility and knowledge, are needed to eliminate child labour. The role of these "other concerned groups, as appropriate" should explicitly be recognized in the proposed Convention, for instance in Article 4 (both paragraphs) and especially in Article 6, paragraph 2.

Netherlands Trade Union Confederation (FNV). The Confederation disagrees with the opinion of the Government above on references to "other concerned groups" in the proposed Convention.

New Zealand

The Government reconfirms its strong support for the development of instruments to address the worst forms of child labour and generally supports the texts in Report IV(1) as a basis for discussion by the Conference at its 87th Session in June 1999. However, comments are made below on the formulations proposed by the Office, and on some aspects of the texts that are not clear, or require expansion or amendment.

New Zealand Employers' Federation (NZEF). In its 1997 response to the ILO's questionnaire on child labour, the NZEF expressed doubt as to whether the introduction of a Convention on child labour would achieve the effect intended by its promoters. Instead, the Federation proposed that the abolition of all exploitative forms of child labour be accepted as a first principle which every country, on becoming a Member of the ILO, would promise to uphold. Should a country not be in a position to guarantee abolition, it would be required to promise to aspire to the complete elimination of all exploitative forms of child labour. In the NZEF's view, requiring promises of this kind would likely be a more effective deterrent than introducing a Convention which member States might well be reluctant to ratify. The NZEF recognizes, however, that the general view of the Conference was in favour of a new Convention and Recommendation and so offers its comments on the Government's report on that basis.

Peru

The Government finds the proposed Convention appropriate for discussion at the 87th Session of the Conference and agrees with the proposed Recommendation, except for the comments below.

Portugal

The proposed text is a satisfactory basis for the second discussion. Observations on specific points are given below under the relevant provisions.

Confederation of Portuguese Industry (CIP). During the first discussion, the Confederation said that instead of adopting new international standards to achieve the elimination of illicit child labour, effective means of action should be taken at the national level. Nevertheless, child labour in itself should not be confused with the "extreme" forms, the "worst" forms or the "most intolerable" forms of such work, which must be eliminated. Therefore, the elimination of child labour in all its forms, in view of the importance of the education and training of young people, should be considered, but in a long-term perspective. The discussion of this problem focuses, then, on extreme forms of child labour. If a new international instrument is adopted on this subject, it is essential that it be realistic, simple and precise and that it reflect adequately all the economic and practical implications, enabling it to be ratified by the highest possible number of member States. There are reservations about the texts of the proposed Convention and Recommendation, which do not constitute a sufficiently appropriate basis for the discussion of this subject at the next session of the Conference.

General Confederation of Portuguese Workers (CGTP-IN). The proposed new ILO Convention and Recommendation on child labour have as their specific aim the prohibition and immediate elimination of the "worst forms of child labour" and are intended to complement the Minimum Age Convention and Recommendation, 1973,

which will continue to be the fundamental ILO instruments in this area. The proposed texts, therefore, have a very specific and restricted objective. They do not contain any references to the fact that all forms of child labour are intrinsically reprehensible, that the final objective continues to be the ultimate abolition of all child labour and that these instruments represent just one small step in this direction. It would be impossible, in fact useless, to approve instruments which call for the immediate abolition of all forms of child labour, as they would meet with little or no acceptance by ILO Members. It is fundamental that the Preamble to the proposed Convention include a clear and express reference in this respect, that would in fact simply reflect the positions that the ILO has always taken, since its inception in 1919, in relation to child labour. Furthermore, the proposed Recommendation, not having the same binding nature as the proposed Convention, could include more advanced provisions in respect of the progressive elimination of all forms of child labour. The expression chosen to delimit the scope of the instruments – "the worst forms of child labour" – is not the most ideal one, in that it involves an implicit value judgement: if there are worse forms, there are also better forms of child labour which are therefore more acceptable – a particularly disturbing idea in the context of the fight against child labour. In reality, however, whatever the expression chosen – "extreme forms", "intolerable forms", "most abusive forms" – there is still a value element because the problem does not lie in the expression used, but in the actual fact of qualifying certain types of child labour as more acceptable than others. The main shortcoming in the proposed instruments is their scope, which is too restricted and, moreover, liable to give the idea that the other forms of child labour not mentioned could, in some way, be acceptable. However, even taking as inevitable the need to restrict the scope of the proposed Convention to the "worst forms of child labour", it is imperative that the definition of what constitutes these forms of work be absolutely clear and objective, on the one hand corresponding strictly to situations considered to be work in the true sense and, on the other, to as broad a range as possible of situations involving child labour. Therefore, it is necessary first of all not to lose sight of the fact that the Conference is defining "forms of labour", which means that other forms of child exploitation, however disgusting and intolerable they may be (such as prostitution or the use of children in illicit activities such as drug trafficking), do not fall within this sphere, because they do not correspond to the concept of work. In spite of the proposed Convention, and other international instruments condemning these forms of child exploitation, it does not seem appropriate to define them as "forms of labour". Secondly, given that the proposed Convention defines a child as any person under the age of 18, it is essential that the "worst forms of child labour" to be abolished immediately include work (of any kind) performed by very young children – let us say under the age of 12 years, with the reservation that any age limit established will always be a random one, but no more so than the boundary between the worst and the best forms of child labour. A distinction is made in this particular case between a child in the strict sense of the word and an adolescent. Certainly no one will question that the use of children of 6 or 7 years of age for work is, objectively and irrespective of the type of work in question, more intolerable than work performed by an adolescent of 15 or 16 years of age or more. The younger the child is, the more his or her physical and mental development will be affected, as well as access to school, and the more flagrant the violation of his or her most basic rights will be. Lastly, work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children, as provided in Article 3(d),

should be specifically defined in the proposed Convention instead of the proposed Recommendation, given that the proposed Convention is a binding instrument. Likewise, the proposed Convention should list these types of work (see the list included in the proposed Recommendation – Paragraph 3) and should stipulate their immediate prohibition and elimination, in keeping with the objectives of the proposed Convention. As for the rest, the Confederation does not disagree in principle, although the Members' obligations should be more clearly formulated, making it clear that the main obligation to which they will become bound through ratification will be the immediate elimination of these forms of child labour and not merely their legal prohibition; in other words, it will not be enough to publish laws prohibiting them (remember that in most countries child labour is already prohibited), but it will be necessary effectively to monitor their practical application through the use of coercive measures (the application of sanctions, preferably penal ones); furthermore, the removal of children from work will imply the existence of alternatives for these children, namely in terms of education. Although the CGTP-IN agrees with the reasoning that brought the ILO to approve the proposed Convention and Recommendation, it could and should go further.

South Africa

New standards in the form of a Convention supplemented by a Recommendation should be adopted.

Business South Africa (BSA). BSA supports the adoption of a Convention and a Recommendation on the immediate abolition of the worst forms of child labour. It supports the formulation of a Convention that would lead to universal ratification. In addition to supplementing the proposed Convention, the proposed Recommendation should be drafted so that it could be used as a stand-alone document in countries that have not ratified the Convention. All comments on particular provisions should be seen against this background.

Sri Lanka

The Government recommends adoption of the new Convention. The principal objective of the proposed Convention is to a large extent in conformity with the objective of recently enacted legislation, the National Child Protection Authority Act, which "provides for the establishment of an authority for the formulation of a national policy on the prevention of child abuse and the protection and treatment of children who are victims of such abuse", and for the coordination and monitoring of action against all forms of child abuse.

Sweden

The Swedish tripartite ILO committee supports a Convention supplemented by a Recommendation. The texts proposed are in close agreement with the conclusions adopted by the Conference in 1998. There is an urgent need for the new Convention concerning the prohibition and immediate elimination of the worst forms of child labour to be included among the fundamental ILO Conventions referred to by the World Summit for Social Development in Copenhagen in 1995 and also the ILO

Declaration on Fundamental Principles and Rights at Work. The United Nations Convention on the Rights of the Child should be the starting-point for continuing work by the ILO, and a stronger link could be made to it in the proposed Convention. It would be logical if the proposed Convention came to be regarded as a refinement of Article 32(1) of the Convention on the Rights of the Child, in the same way that Convention No. 138 is in relation to Article 32(2). Such an interaction could have a great impact, given, among other things, that 191 States have acceded to the Convention on the Rights of the Child. It would also be of great benefit to the work of the United Nations Committee on the Rights of the Child and UNICEF if it could be said that Article 32(1) is made clearer by the new Convention. See also comments below under the Preamble.

Swedish Employers' Confederation (SAF). There must be a short, simple and generally worded instrument which can be ratified by as many States as possible immediately after its adoption by the Conference in June 1999.

Switzerland

The Government of Switzerland fully supports the elaboration of a new Convention and new Recommendation on the worst forms of child labour.

Confederation of Swiss Employers (UPS). The UPS fully supports the adoption of international instruments concerning the elimination of the worst forms of child labour. These instruments should be concise and well targeted in order to be understood, accepted and ratified by as many member States as possible. The proposed texts constitute a satisfactory basis for a second discussion in 1999.

Federation of Swiss Salaried Employees' Association (FSE/VSA). The FSE/VSA welcomes the Conference's initiative to develop an international instrument which will concentrate on the elimination of the worst forms of child labour.

Swiss Confederation of Christian Trade Unions (CSC/CNG). The outcome of the first discussion was positive even if there is still a need to discuss in depth the role of education and the use of children for military purposes.

Turkey

Confederation of Progressive Trade Unions of Turkey (DÝSK). The proposed Convention and Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour are appropriate and the Confederation endorses the texts. However, the proposed Convention would come closer to its objective if the following points are added. First, any type of work which keeps children from school must be recognized as one of the worst forms of child labour. The essential and inalienable right to education can be a fundamental criterion in response to the argument made by countries that children are obliged to work since they would otherwise be driven to prostitution or starvation. Second, the views of the children affected by child labour and of their families must be sought and included in future action programmes designed to prevent child labour. Finally, the practice of arming children and sending them to war must also be defined as "hazardous work". The fact that children are being used in wars is a totally unacceptable situation. In fact, sending children to war is a practice which is prohibited in various international human rights instruments. Inclusion of the practice of sending children to fight in wars in the scope of the ILO Conven-

tion and its definition as a practice which must be prohibited and immediately eliminated would strengthen other international laws and initiatives in the field.

United Kingdom

The text of the report is broadly in line with the United Kingdom's views reflected in the conclusions of the Committee on Child Labour at the 86th Session of the Conference. The Government is therefore of the opinion that the proposed texts of the instruments provide a suitable basis for discussion at the 87th Session of the Conference in June 1999. The comments below under the relevant provisions therefore focus on the amendments introduced by the Office.

United States

While the texts of the proposed Convention and Recommendation are, on the whole, a satisfactory basis for discussion by the Conference at its 87th Session in June 1999, comments and suggested amendments are proposed in furtherance of the widely subscribed view that the new instruments be crafted to permit broad ratification. These comments and amendments have been agreed on a tripartite basis. The ILO must create a Convention that is strong and meaningful but that can be ratified and implemented by the widest possible number of member States. All comments below flow from this fundamental idea. It is imperative to adopt an instrument which creates immediate and concrete obligations for member States to stop the worst forms of child labour. The objective, then, must be to keep the proposed Convention narrowly focused and action-oriented, in plain language and without duplication. It should emphasize outcomes and provide a framework sufficiently flexible to accommodate appropriate diversity in national policies and practices. The aim of the proposed Convention clearly is the elimination of the worst forms of child labour, i.e. work that is the most harmful and performed by the most vulnerable children. For this reason, the proposed Convention must not be a restatement or a revision of Convention No. 138, which will remain the basic ILO standard on child labour. Rather, the new instrument should be viewed as applicable to a subset of the types of labour covered by Convention No. 138. Such a view does not compromise Convention No. 138. In fact, it permits consistency with Convention No. 138 where appropriate, and going beyond it where necessary. Attempts to incorporate the language of Convention No. 138 would be counterproductive as they could render the proposed Convention unratifiable for countries that have encountered difficulties in ratifying Convention No. 138. In this regard, any work proposed to be banned in addition to bonded labour and work in the sex and drug industries must be of the same severity as these imminently harmful and readily identifiable work categories. The third and fourth paragraphs of the Preamble to the proposed Convention refer to the "prohibition and effective elimination of the worst forms of child labour" and explain that "effective elimination of the worst forms of child labour requires immediate and comprehensive action". This is the correct approach, since it is unrealistic to expect that the worst forms of child labour can in all cases be eliminated immediately. During the first discussion, some delegates considered that "immediate" means "as soon as possible", but this is by no means the accepted definition of the term. The language of the proposed Convention and Recommendation should be fully understandable to all who will read them, and the proposed

Convention's provisions should lend themselves to "immediate" and as wide as possible ratification by all member States. Therefore, the title of the draft instruments should be changed to "the proposed Convention and the proposed Recommendation concerning the prohibition and effective elimination of the worst forms of child labour" and all other references to "immediate" elimination should be replaced with "effective" elimination. The focus of the instruments is thereby placed on urgent and comprehensive measures, provisions which would be immediately applicable, the aim of which is the total elimination of the worst forms of child labour. Finally, no provisions should be moved from the proposed Recommendation into the proposed Convention, because it would diminish the likelihood of ratification by member States.

Venezuela

Confederation of Autonomous Trade Unions (CODESA). Any legitimate activity engaged in by children anywhere in the world and which warrants the supervision of the government must be conducive to their full physical, mental, spiritual, moral and intellectual development. The instrument adopted by the Conference should not focus only on negative aspects, such as stressing that its objective is the elimination of the worst forms of child labour or the immediate elimination of any particular type of work, but should also emphasize positive aspects. For example, the governments and civil societies of countries where poverty is seen as making child labour necessary should devise forms of child labour that are culturally based, such as theatrical activities and other activities that develop the child's artistic talents and skills, such as music, poetry and painting. Such activities should be strictly supervised by the State.

Holy See

Taking into consideration its status of observer and without intervening directly in the debate on the new legal instruments, the Holy See confirms its full support to the objectives of the proposed new international standards concerning the prohibition and elimination of the worst forms of child labour.

United Nations Committee on the Rights of the Child

The Committee welcomes the close cooperation it has established with the ILO regarding the implementation of existing norms as well as the drafting of new norms to eliminate the worst forms of child labour. The Committee wishes to emphasize that the Convention on the Rights of the Child has now reached near-universal ratification (191 States parties) and that its principles and provisions, especially its Article 32, call upon States parties to duly take into account other existing international instruments, including with regard to the minimum age for admission to employment, regulation of hours and conditions of employment and the provision of appropriate sanctions. The Committee has taken note of the text of the proposed new Convention concerning the prohibition and immediate elimination of the worst forms of child labour. It strongly welcomes the fact that the text of the proposed Convention integrates many recommendations and comments made by the Committee during its thematic discussion on the economic exploitation of children held at its fourth session in 1993 and in its letter dated 12 February 1997 to the Director-General of the ILO (request to reply to the ILO

questionnaire regarding the drafting of a proposed Convention concerning the prohibition and immediate elimination of the worst forms of child labour). Specific comments on Articles 3 and 5 appear below.

OFFICE COMMENTARY

The general observations reinforce the overwhelming support for new ILO standards specifically focused on the worst forms of child labour. The replies also indicate that the texts of the proposed Convention and Recommendation are a good basis for discussion during the 1999 session of the International Labour Conference. Nevertheless, amendments have been suggested on several points and there is a divergence of opinion on some key issues.

It should be noted at the outset that the Proposed Conclusions discussed by the Conference Committee in 1998 had referred to "extreme" forms of child labour. The Committee, however, amended the reference to read the "worst" forms of child labour. This continues to be accepted, although some reservations have been reiterated about the possible implication that certain types of child labour are more acceptable than others.

The desire is expressed again in the general observations to have a short, focused Convention, dealing with basic principles and capable of being ratified in all member States. It is also suggested that it should define the worst forms of child labour and the measures required for their immediate elimination clearly and realistically enough to make their implementation and ratification feasible, that it should be among the fundamental ILO Conventions, and that it should create immediate and concrete obligations that are narrowly focused and action-oriented.

The determination of what constitutes "the worst forms of child labour" remains at the heart of the debate. A major issue is whether the extreme or worst forms of child labour have adequately been identified and separated out from other forms or kinds of child labour. This debate is centred around the definition in Article 3(d) of the proposed Convention and whether further clarity should be provided by referring more directly in the Convention to the kinds of work considered likely to jeopardize the health, safety or morals of children, or whether the flexibility in Article 4 for national determination is sufficient and appropriate. Other issues to come before the Conference relate to the inclusion of access to basic education and a direct reference to child soldiers or other involvement of children in armed conflict or military activity in the definition of the worst forms of child labour.

There are also differences of opinion on the time frame within which the worst forms of child labour are to be eliminated, and the meaning to be given to the relevant phrases in the Preamble (immediate and comprehensive action for effective elimination), in Article 1 (measures for immediate elimination) and in Article 7 (effective and time-bound measures).

The relationship between the new standards and the Minimum Age Convention, 1973 (No. 138), is another central issue. Concerns are raised in particular with respect to the references to Convention No. 138 in the Preamble and to the similarities between Articles 3(d) and 4 concerning the definition of the worst forms of child labour, and the provisions in Article 3 of Convention No. 138 on the higher minimum age for hazardous work. Generally, commentators elaborate on different principles that they believe should govern the relationship between the instruments. Some replies reiterate the im-

portance of making it clear that the new Convention does not replace or undermine Convention No. 138, but that it is consistent with it, and that Convention No. 138 remains the fundamental ILO Convention for the total abolition of child labour. Others are concerned that a repetition of, or too close a link with, provisions in Convention No. 138 is inappropriate and might result in the adoption of provisions which could pose similar obstacles to ratification, or that references to child labour in general are inappropriate because some forms of work by children are acceptable. These issues are discussed below in the commentary on the Preamble and Articles 3 and 4.

In general, an underlying concern is whether the value added of a new Convention has been clearly established. As drafted, the proposed Convention differs from existing standards in that it focuses on the worst forms of child labour, requiring priority action in the form of immediate elimination; explicitly lists some of these worst forms while allowing flexibility at the national level to determine which hazards bring other work into the category of the worst forms; provides for monitoring mechanisms and programmes of action; requires measures of prevention, rehabilitation and reintegration; stipulates that special attention shall be given to children at special risk and the situation of girls; and calls for international cooperation and assistance.

The Office has taken note of the proposals for drafting changes made by governments and employers' and workers' organizations. However, a minimal number of changes have been made to the texts, given that on most issues the present text is accepted by the majority or there is not sufficient agreement to support one particular change over another. In some instances, the Office offers, merely for consideration, some possible alternatives under the relevant provisions below to address some of the concerns raised in the comments.

Observations on the proposed Convention concerning the prohibition and immediate elimination of the worst forms of child labour [2]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and effective elimination of the worst forms of child labour, as the main priority for national and international action, to complement the Convention and Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain the fundamental instruments with a view to achieving the total abolition of child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of basic education and the need to remove the concerned children from work and to provide for their rehabilitation and social reintegration, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development, 1995, and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995, and

[2] The observations are preceded by the relevant texts as given in the proposed Convention set out in Report IV (1).

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Recalling the relevant provisions of the Labour Inspection Convention, 1947, and the Human Resources Development Convention and Recommendation, 1975, as well as the Declaration on Equality of Opportunity and Treatment for Women Workers, adopted by the International Labour Conference in 1975, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999:

Observations on the Preamble

Argentina. Third and fourth paragraphs: Agrees with the original proposal "immediate elimination".

Australia. Concerning the drafting changes made in the third and fourth paragraphs, the Government does not object to the reference to "effective elimination" of the worst forms of child labour as the main priority for national and international action or to the format in the fourth paragraph providing an explanation of what is involved in the effective elimination of such labour. The Government does not support including at the end of the third paragraph the text "... with a view to achieving the total abolition of child labour". While the purpose is to align the text with the Preamble to Convention No. 138, the focus should be kept on the aims and purposes of the new instrument and not on the aim of another standard. The adoption of the new instrument should not be seen just as a step in achieving the objective of effective abolition of all forms of child labour, which, with limited exceptions, is the subject of Convention No. 138. The reference in the fourth paragraph to the "need to remove the concerned children from work" should be amended to read "from such work" to make it clear that it is not proposed that children be removed from all work.

Bahrain. Include a reference to the Universal Declaration of Human Rights, 1948, as it is one of the most widely known and influential documents in the field of human rights. Reference should also be made to the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

Belgium. Agrees to the changes made by the Office to align the texts of the third and fourth paragraphs with the title of the proposed Convention.

CNT. Regrets that the Preamble does not stress the need for collaboration and coordination between the ILO and other organizations of the United Nations system.

Brazil. CNC. The Preamble should be as concise as possible, avoiding references to instruments relating to other issues, such as human resources development and equality of opportunity and treatment for women workers.

Bulgaria. Wholly supports the text of the Preamble.

Canada. Amend the third paragraph, which begins "Considering the need to adopt", to clarify the double objective of Convention No. 138, which is to abolish child

labour and raise progressively the minimum age for admission to employment. This would indicate that the proposed Convention does not require the abolition of all forms of work by children. Insert the word "such" before "work" in the fourth paragraph, to clarify the intention to remove children from the worst forms of child labour, not from all work.

Canadian Employers Council (CEC). Agrees with the Office's proposed rewording. Third paragraph: The addition of the words "with a view to achieving the total abolition of child labour" when referring to Convention No. 138 is misleading, as that Convention allows some forms of child labour such as "light work". Furthermore, notwithstanding allowed exceptions under Convention No. 138, it has not received broad acceptance. Many member States (including Canada) have not ratified it and probably will never do so and some ratifying Members have made few efforts to implement it. Finally, many employers and citizens do not support the total abolition of child labour in Canada. Part-time activities such as paper routes, babysitting and the like are generally regarded as beneficial to children of appropriate age. Canadian employers do, however, support wholeheartedly the total abolition of the worst forms of child labour (subject to an acceptable definition of the classes of activities it would encompass). Fourth paragraph: Move the adjective "concerned" to after "children".

Chile. Agrees with the Office's new formulation of the two paragraphs, which originally contained an element of duplication. The proposed change in the second of these contributes to the comprehension of the proposed instrument by explaining and putting into context the meaning of the term "effective elimination".

United Trades Confederation of Small and Medium-sized Enterprise, Service and Craft Industries of Chile (CONUPIA). The term "as a priority" should be expanded and improved by establishing times and deadlines.

Croatia. The Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, and the Night Work of Young Persons (Industry) Convention (Revised), 1948, should be added to the seventh paragraph of the Preamble. The definition of the worst forms of child labour includes any type of work which could jeopardize the health of children, and Paragraph 3(e) of the proposed Recommendation specifically refers to night work as hazardous.

Denmark. Maintain the reference to "immediate and comprehensive action" in the third paragraph, because the text proposed by the Office does not emphasize that action must be taken immediately, only that effective elimination must be achieved.

Ecuador. Agrees.

Egypt. Approves of the Preamble. Suggests including in the fourth paragraph the phrase "to reduce poverty" after "the importance of basic education".

Egyptian Trade Union Federation. Agrees with the text of the Preamble. However, the numbers, not only the title and date, of Conventions and Recommendations referred to should be included, so they can be retrieved more easily. In addition, add: "in order to alleviate poverty and fight unemployment" to the fourth paragraph after "comprehensive action".

El Salvador. Reference should be made to all the relevant international declarations, programmes and platforms of action, Conventions and Recommendations, and

to the importance of basic education in the removal of children from work and their rehabilitation and social reintegration.

Finland. At the June 1998 Session of the Conference, Finland supported including references to other international conventions, such as the United Nations Convention on the Rights of the Child, which has an important role in implementing the new Convention. Finland supports the references in the Preamble to internationally important agreements of which Finland is a signatory and the important role of basic education in the prevention and elimination of child labour. Basic education is one of the most important tools available to development cooperation programmes which aim to reduce and eliminate the use of child labour. Removing the double reference to "comprehensive action" in the third and fourth paragraphs has improved the language of the text. The Government strongly supports the recommended wording "with a view to achieving the total abolition of child labour". A reference to the conclusions of the International Conference on Child Labour held in Oslo from 27 to 30 October 1997 should be included in the fifth paragraph, and a reference to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which deals with discrimination in access to employment, training and working conditions, should be included in the seventh paragraph.

Federation of Finnish Enterprises (SY). See comment under Article 7.

France. French Democratic Confederation of Labour (CFDT). Taking children out of work and reintegrating them into society is important. Governments should take immediate global measures. A reference to poverty in the Preamble would be inappropriate since poverty is one of a number of factors that contribute to child labour and should not be presented as being the principal one.

Germany. Supports changes made by the Office, which appear to be appropriate.

BDA. The references to the Copenhagen Declaration on Social Development, the Programme of Action of the World Summit for Social Development, 1995, the Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995, and the Declaration on Equality of Opportunity and Treatment for Women Workers should be deleted. The Preamble should be short and restricted to subject matter of recognizable relevance; the relevance of these declarations to the subject of the proposed Convention is not clear since they have nothing directly to do with its subject matter.

German Confederation of Trade Unions (DGB). Third paragraph: The reference to Convention No. 138 is particularly relevant with regard to the general minimum age (18 years) laid down in the proposed Convention. Convention No. 138 sets the minimum age for hazardous work at 18 years, the general age for admission to employment at 15 (14 years initially in countries whose economy is insufficiently developed). Light work may be performed by persons 13 years of age (or 12 years initially in view of the level of economic development). The following three main objections arise with regard to a minimum age of 18 years: general objections based on the impact of the proposed Convention on the employment of persons aged between 15 (14) and 18; possible impact on participation of persons aged under 18 in vocational training measures, especially in cases in which trainees are involved in activities at the workplace; and a possible conflict between the provisions of the proposed Convention and the legislation on the age of consent (legal age for sexual activity) in several countries. This concerns participation in commercial sexual activities/

prostitution of persons aged under 18 but over the legal age of consent. The proposed Convention should supplement Convention No. 138, and its provisions concerning the employment/training of persons aged between 15 (14) and 18 in non-hazardous work should be taken into account in the application and interpretation of the new Convention. Apart from this, the provisions of the proposed instrument bear a considerable resemblance to Convention No. 138, since the minimum age of 18 only applies to the worst forms of child labour. Fourth paragraph: This was the subject of heated debate in the first discussion, with objections raised mainly against the requirement to take immediate action. The DGB stressed that this should not be taken to mean that all cases of the worst forms of child labour would immediately disappear, but rather that immediate and comprehensive action should be taken by governments, i.e. that appropriate measures must be taken immediately. Although the Workers' group agrees that clearer wording in some places might be helpful, the wording proposed by the Office does contain some substantive changes that call for further discussion. Some governments were clearly in favour of an explicit reference to poverty as a cause of child labour. The Workers' group agreed that poverty was a consequence and a cause of child labour and suggested a compromise text to the effect that ratifying States would be assisted in applying the provisions of the Convention by the ILO in cooperation with other institutions. The compromise text was rejected by the Committee. The Workers' group decided not to pursue the reference to poverty further, since poverty could serve as a pretext for not applying the Convention fully, and poverty is only one of many factors causing child labour and therefore should not be put forward as the only main factor.

Greece. Agrees to the changes made by the Office in the third and fourth paragraphs.

National Confederation of Greek Trade. Agrees to the changes made by the Office in the third and fourth paragraphs.

Ireland. ICTU. The proposed Convention stresses that immediate elimination of the worst forms of child labour requires comprehensive action and that the children affected should be removed from work, rehabilitated and reintegrated into society. There was considerable debate on this issue in the first discussion, in particular objections from certain governments to the requirement for immediate action. The Workers' group stressed that they did not believe that this should be interpreted to mean that all cases of the worst forms of child labour would disappear immediately, but that immediate and comprehensive action should be taken by governments – that is, action should be taken without delay. The Office has endeavoured to redraft the relevant sections in the Preamble and operative part of the proposed Convention (Preamble and Article 6). While the ICTU accepts that some clarification of language in certain paragraphs might be useful, the wording proposed by the Office could be seen to involve rather more substantial changes on this issue than is necessary. Some governments argued strongly during the first discussion for clear references in the Convention to poverty as a cause of child labour. The Workers' group accepted that child labour is both a consequence and a cause of poverty and proposed compromise language which would require ratifying countries to support cooperation between the ILO and other institutions to implement the provisions of the Convention. The compromise proposal was not accepted by the Committee. The ICTU does not believe that a proposal for the inclusion of a reference to poverty in the Convention should be agreed, as some gov-

ernments could use poverty as an excuse to avoid fully implementing the requirements of the Convention. Because poverty is one of many factors which causes child labour, it should not be presented as being the only major factor. The ICTU supports the proposal to include a reference to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in the Preamble along with a reference to the conclusions of the International Conference on Child Labour held in Oslo from 27 to 30 October 1997.

Italy. Agrees with the change made by the Office and is very pleased with the formulation of the third preambular paragraph which states that the effective elimination of the worst forms of child labour is "the main priority for national and international action" but "with a view to achieving the total abolition of child labour". The term "to remove from work" used in the proposed text should be interpreted in the broadest possible sense: to remove from extreme forms of work on a priority basis, as part of comprehensive action to remove children from work.

CGIL, CISL and UIL. It is appropriate that the proposed Convention refers to the worst forms of child labour rather than the most intolerable or extreme forms. Agree that the new instruments supplement Convention No. 138 and Recommendation No. 146, which remain fundamental instruments. Suggest that the third preambular paragraph should keep the following words: "for the prohibition and immediate and comprehensive action for the ...". The following paragraph should also remain as the Committee approved it. As regards the question of removal from work, which also appears in Article 7, paragraph 2, the formulation should stay as it is. It is proposed to insert in the Preamble a reference to the conclusions of the International Conference on Child Labour held in Oslo in 1997 and Convention No. 111.

Kenya. COTU. Fourth paragraph: The words "immediate and comprehensive" suggest bold action without delay or urgent action in an holistic way. The social partners need to make serious comments on this issue. Poverty should be cited for its special relevance in three ways: as a consequence and cause of child labour, as a factor that must be eliminated, and because of its relationship to social justice, which must be promoted. This will give full meaning to the words "comprehensive action".

Madagascar. Approves the proposed text. The fight against child labour requires comprehensive action that should be undertaken within the global framework of the ongoing programme on poverty eradication. This includes education and rehabilitation.

Mexico. The title of the new instrument, which should be a Recommendation only, should be "Recommendation concerning the immediate prohibition and progressive elimination of the worst forms of child labour". First, second, fifth, sixth, seventh and eighth paragraphs: Retain. Third paragraph: Delete "to adopt new instruments" and replace "complement" with "strengthen". Insert a new fourth paragraph: "Considering that there is a radical difference between the terms 'exploitation of children' and 'economic exploitation of child labour', the first referring to situations involving crimes and offences against children and the second to activities which are among the forms of labour to which this Recommendation refers as the worst forms of child labour". Existing proposed fourth paragraph: Replace the term "effective" by "progressive". Tenth paragraph: Replace the words "Immediate Abolition" with "Immediate Prohibition and Progressive Elimination".

Morocco. Replace "national and international action" by "national action, and international cooperation and assistance".

New Zealand. The Preamble contains unnecessary references to other international instruments. Although it is useful to recall existing instruments dealing with similar matters, it is also desirable to use the drafting of new instruments to move forward and make progress on issues within the contemporary context. The United Nations Convention on the Rights of the Child, 1989, is the key instrument relating to children, and therefore the Preamble needs to explicitly link the purpose of the proposed Convention with the fundamental rights set out in the Convention on the Rights of the Child. It is suggested therefore that the Preamble refer to the core principles contained in that Convention which have specific relevance to the proposed Convention, such as article 3 concerning the best interests of the child and article 12 dealing with the right of the child to be heard in matters affecting the child. Including such a reference in the Preamble would highlight the fundamental purpose of the proposed Convention, which is to protect child workers from harm, and link it to the cornerstone instrument which sets out children's rights. The Government supports the revised texts in the third and fourth paragraphs, regarding the use of "effective elimination" and "prohibition and immediate and comprehensive action". Concerning the third paragraph, which draws a relationship between Convention No. 138 and the proposed Convention, the Government does not support the formulation recommended by the Office. Firstly, all forms of child labour are not harmful, and therefore "to achieve the total abolition of child labour" should not be included (in New Zealand there is a long-established practice of the employment of children in part-time/holiday work, i.e. outside school hours, such as newspaper rounds and fruit picking). Secondly, despite recent ratifications, Convention No. 138 has yet to gain broad acceptance. It may therefore be counterproductive to the goal of universal ratification of the proposed Convention if the text of the latter is aligned too closely with that of Convention No. 138.

NZEF. Agrees with the Government that the Preamble contains unnecessary references to earlier international instruments. While these instruments may cover some of the worst forms of child labour, the fact that they have not enjoyed universal ratification, and that inappropriate forms of child labour continue to exist, indicates a lack of success in achieving the end they were intended to achieve. Reference to such instruments is unlikely, therefore, to be particularly effective in encouraging ratification of a new Convention, which should be accepted or rejected on its own merits. The NZEF disagrees with the Government that the Preamble should refer to the core principles contained in the Convention on the Rights of the Child. That Convention's potential difficulties of interpretation make it desirable that any instrument developed by the ILO be judged on its own merits and ratified (or not) accordingly. The NZEF supports the proposed textual revision in the third and fourth paragraphs, which it agrees are tautological, and agrees with the Government's opposition to the reference in the third paragraph to Convention No. 138, as there are forms of "child labour" in New Zealand that have never traditionally been considered harmful. Rather, they are looked upon as an effective way of helping young people to become aware of the world of work and its accruing rights and responsibilities. Jobs of this kind may only be performed on a part-time or casual basis, may not involve hazardous work, and may in no circumstances interfere with a young person's schooling.

New Zealand Council of Trade Unions (NZCTU). Supports the changes in the proposed text of the Convention from the words "immediate elimination" to "immediate and comprehensive action" in the third and fourth paragraphs, as it is sufficiently clear that action to be taken by governments is to be done without delay. Concerning the third paragraph, the NZCTU agrees that Convention No. 138 is the fundamental ILO instrument on child labour and that the new Convention should complement it. The NZCTU notes that the Government does not support the words "to achieve the total abolition of child labour" for the reason that not all forms of work undertaken by children are hazardous or harmful. New Zealand has a long-established practice of children working part time after school and during the holidays. However, neither Convention No. 138 nor the proposed new Convention on the worst forms of child labour are intended to eliminate all work undertaken by children. The proposed new Convention is designed with a specific focus on eliminating the worst forms of child labour, not all forms of work undertaken by children. Although Convention No. 138 is broader, it is implicit in its provisions that not all forms of work undertaken by children are considered to be harmful. This is evidenced by its benchmarks for admission into employment. For example, all children over the age of 15 years are permitted to perform non-hazardous work, and children between 13 and 15 years of age may undertake light work. Hazardous work is restricted to persons over 18 years of age. The NZCTU does not believe that the words "total abolition of child labour" are intended to capture all forms of work undertaken by children. It therefore supports the current wording recommended by the Office.

Norway. The Preamble should mention that harmful child labour, including the worst forms of child labour, is prohibited by the Convention on the Rights of the Child. The reference to that Convention in the fifth paragraph is general and it is not mentioned in the sixth paragraph, which refers to other instruments that deal with some of the worst forms of child labour. It is important to point out that States already have an obligation to prevent these forms of child labour under article 32 of the Convention on the Rights of the Child. There should also be a reference to the conclusions adopted by the International Conference on Child Labour in 1997, especially the Agenda for Action.

Portugal. The Government agrees with the changes made by the Office in the third and fourth paragraphs, which simplify the text without affecting its content.

CIP. The Preamble is too extensive, including references to the Convention on the Rights of the Child and to other international instruments, which, contrary to the desired aim, does not confer greater clarity or simplicity on the text.

CGTP-IN. The Preamble should state expressly and clearly that all forms of child labour are intrinsically reprehensible and that the ILO's final objective is the short-term abolition of all forms of child labour.

Senegal. Fourth paragraph: Suggests replacing the words "immediate and comprehensive action" with "a vast alliance".

South Africa. Supports the Office's change to the third paragraph to include "with a view to achieving the total abolition of child labour".

BSA. Including the words "total abolition of child labour" in the third paragraph, allegedly to bring the new proposed Convention in line with Convention No. 138, could become a stumbling block to the universal ratification of the proposed Con-

vention. Either this reference should be deleted or a definition should be given to explain the meaning in relation to the proposed Convention. It is surely not the intention to prohibit all child labour under the age of 18, something that would, for instance, even prohibit a youngster from earning pocket money during school holidays. The explicit reference to various other international instruments in the Preamble could also act as a deterrent to ratification, in particular where mention is made of international instruments that have not been accepted, adopted or ratified by the countries concerned.

Spain. The Government objects to the way in which the Preamble reflects a tendency to prohibit all child labour for those under 18 years of age, given that the aim of the proposed Convention is to focus on the "worst forms" of child labour. If the instrument concentrates on the worst forms of child labour, the result will be different from one that focuses on child labour in general, in which case the age limit could be lower. More specifically, the reference in the third paragraph to the Minimum Age Convention and Recommendation, 1973, to the effect that they "remain the fundamental instruments with a view to achieving the total abolition of child labour", is confusing. Taking into account that Article 2 defines "child" as "all persons under the age of 18", the inevitable conclusion is that the third preambular paragraph provides that ratifying States undertake the goal of achieving the "total elimination" of child labour for persons under 18. Likewise, this paragraph appears to indicate that ratifying States undertake to achieve the "total abolition" of child labour of persons under 18, an objective which is not only philosophically questionable, but out of place in a Convention which should focus on the worst or extreme forms of child labour and, by doing so, attract unanimous support among member States. The declarations and programmes of action referred to in the fifth paragraph, such as the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development, 1995, and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995, are not legal instruments, and governments are not bound by them. If these references are included in the proposed Convention, ratifying States would have to adjust their strategies and programmes to them. Furthermore, whenever the proposed Convention refers to the "total abolition of child labour" or "the need to remove ... children from work", it should be stated and not forgotten that reference is always made to "the worst forms" of child labour. A Convention on the worst or extreme forms of child labour should be clear, concise and comprehensible.

Spanish Employers' Confederation (CEOE). The changes by the Office in the third and fourth paragraphs are an improvement as they eliminate the duplication mentioned while retaining the sense of the amendments accepted in the Committee. Using "prohibition and immediate and comprehensive action" instead of "immediate elimination of the worst forms of child labour" is supported, given the difficulties the latter would pose for certain countries where child labour is endemic. The changes made by the Office in the third paragraph also preserve the spirit of the agreement reached in the Committee on the complementarity between this proposed Convention and the Minimum Age Convention and Recommendation, 1973.

Sudan. During the 1998 Session of the Conference there were lengthy discussions about the expression "immediate elimination". Although this phrase has been replaced in the Articles of the proposed Convention by "take measures to secure the prohibition

and immediate elimination", it has been included in the title. Considering that the immediate elimination of the worst forms of child labour requires measures and action to be taken, the present title is not in conformity with the reality of the situation or the text of Article 1. Thus, the proposed Convention should be called "Measures for the Immediate Elimination of the Worst Forms of Child Labour Convention, 1999".

Sweden. The United Nations Convention on the Rights of the Child should be given a paragraph to itself. Binding instruments should be mentioned consecutively and references to conferences and meetings should be separate.

Tunisia. Agrees with the deletion of the reference to "immediate and comprehensive action" in the Preamble.

Uganda. Third and fourth paragraphs: Comprehensive action may require time and resources to set up necessary infrastructure and mechanisms and sensitize all parties. The prohibition preceding the elimination of the worst forms of child labour may be difficult, especially in the African context, where creating the necessary infrastructure and mechanisms and sensitizing the people is in a preliminary stage. It would be more appropriate to have the comprehensive action before the prohibition and the paragraph could read: "for the effective elimination and prohibition of the worst forms of child labour".

United Kingdom. Agrees with the Office's revision. It is clearer and preserves the sense that immediate "action" is required, not immediate elimination of the worst forms of child labour. This is the correct approach as, apart from not being a practical possibility in any case, a commitment to eliminate the worst forms immediately would make ratification unlikely for many member States. However, the title of the Convention still refers to "immediate elimination" and this should be changed. Immediate elimination is impractical and unenforceable at the present time.

United States. Does not support adding language regarding the total abolition of child labour. Even though this phrase is taken from the Preamble to Convention No. 138, it is unnecessary because the total elimination of child labour is not the aim of the proposed Convention, and the adjective is potentially confusing. As noted above under *General observations*, the proposed Convention should be neither a restatement nor a revision of Convention No. 138. Furthermore, its provisions should be easily understood. Similarly, while the Preamble should acknowledge that the proposed Convention will complement Convention No. 138, the negotiating history should nevertheless make it clear that this proposed Convention is completely separate from the requirements of Convention No. 138, since the proposed Convention should focus on the elimination of only the worst forms of work. The last part of the third paragraph should read: "which remain[s] the comprehensive instrument[s] on child labour". Agrees with the comments made during the first discussion to the effect that a shorter, plainer Preamble would be preferable and could therefore support proposals for limiting the references to international instruments solely to ILO Conventions Nos. 138 and 29 and the United Nations Convention on the Rights of the Child. For the same reasons, recalling the relevant provisions of Conventions Nos. 81 and 142 and the Declaration on Equality of Opportunity and Treatment for Women Workers is unnecessary. In the last paragraph of the Preamble, in keeping with comments made above on the term "immediate elimination", the proposed Convention should be cited simply as the "Abolition of the Worst Forms of Child Labour Convention, 1999".

Venezuela. Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS). Agrees with the use of the phrase "immediate and comprehensive action".

Office commentary

In general, the comments show a difference of opinion on the appropriate references to be made in the Preamble and the reasons for doing so and raise some questions about the status of the Preamble.

The meaning and effect of the Preamble

The Preamble is not an operative part of the instrument, meaning that it does not have legal force. It can be helpful, however, in interpreting ambiguities within the text. Under international treaty law,[3] the basic principle of interpretation is that a "treaty shall be interpreted in good faith in accordance with the ordinary meaning[4] to be given to the terms of the treaty in their context and in the light of its object and purpose". The Preamble forms part of the context of the Convention and is relevant in determining its overall object and purpose.

Use of the Preamble to establish the relationship of new instruments to existing instruments

International labour Conventions are designed to form a coherent body of minimum standards in the field of competence of the International Labour Organization. The standard-setting body, the International Labour Conference, takes care to ensure that there is neither duplication of nor conflict between the provisions of different Conventions; one means regularly used by it is to refer in the Preamble to relevant existing texts and to define, again in the Preamble, the legislative gap which the new instrument is designed to fill.

The Office had therefore suggested a short Preamble which would provide the reader with an introduction to the reason for adopting a new instrument and the context in which it is being adopted. This was intended to avoid confusion, to keep the Preamble focused, and to refer only to the other particularly relevant instruments that cover the same subject and might give rise to some question as to its relationship with the other instruments.[5]

The comments reveal a preference for a shorter Preamble but also some continued disagreement over the appropriate references. Some replies suggest deletions from the list, while others suggest additions.

Reference to Convention No. 138 in the third preambular paragraph

Following the first discussion, the end of the third preambular paragraph was revised by the Office. The reference to "the Convention and Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain the

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[3] Vienna Convention on the Law of Treaties, 1969, Article 31(1).

[4] A special meaning, however, can be given to a term if that is what the parties intend (ibid., Article 31(4)).

[5] The Preamble of Convention No. 138, for example, states that a general instrument is being established on the subject to gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour. It mentions only those particular existing standards.

fundamental instruments for the abolition of child labour" is amended to read: "which remain the fundamental instruments with a view to achieving the total abolition of child labour". The purpose was to correctly reflect the language of the Preamble to the Minimum Age Convention, 1973 (No. 138).

The Office has retained the reference as an accurate restatement of the purpose of Convention No. 138 from its own Preamble, which is supported by most of those who commented. Those who object do so because they consider that the language may imply that immediate action is to be taken to abolish all forms of child labour or they do not view all "child labour" as inappropriate and thus do not want the reference made. However, the new instrument does not apply to all forms of child labour and the aims of the two Conventions are different.

The divergence of views on this point may be reduced if the term "child labour" is seen as referring not to all work by children, but rather to work which is prohibited by ILO standards. This is how the Office understands the term. Under Convention No. 138, for example, allowable work is subject to minimum ages. Whether it is to be prohibited depends on the age of the child, the kind of work, the circumstances in which it is carried out, whether it jeopardizes safety, health or morals, whether it prejudices attendance at school, and the like. Work which does not conflict with the standard is allowed. Some countries give examples of work which they believe is suitable for children but imply that it is the kind of work prohibited by Convention No. 138 as child labour. It appears that some of the examples given would not be prohibited by Convention No. 138 and thus would not be understood as "child labour".

Third and fourth preambular paragraphs

As commented upon in Report IV(1), the texts in the two preambular paragraphs of the proposed Convention beginning "Considering ..." (third and fourth paragraphs) were revised by amendments in the Committee during the first discussion. The compromise reached on the language of the Preamble was to refer to new instruments "for the prohibition and for immediate and comprehensive action for the elimination of the worst forms of child labour", rather than to the "immediate elimination" of such forms. In the next preambular paragraph it was stated that "effective elimination of the worst forms of child labour requires comprehensive action, taking into account the importance of basic education and the need for the removal from work and the rehabilitation and social reintegration of the children concerned". There was thus an element of duplication in that both paragraphs referred to the need for "comprehensive action", a need which (according to the second of the two paragraphs) stems from the need for "effective elimination".

The Office had been invited to review the drafting of these paragraphs. In doing so, it redrafted them to keep the references to "effective elimination" and "prohibition and immediate and comprehensive action" that had been decided upon by the Committee, but to avoid the duplication. The first of the two paragraphs now refers to the need for new instruments "for the prohibition and effective elimination of the worst forms of child labour" as the main priority for national and international action, and the second explains what is entailed by "effective elimination", namely "immediate and comprehensive action, taking into account the importance of basic education and the need to remove the concerned children from work and to provide for their rehabilitation and social reintegration".

There is considerable support for this in the comments, and the changes have accordingly been maintained. It is emphasized, however, that it reflects the Committee's decisions taken on the Preamble. In the operative part of the Convention, in Article 1, the Committee decided that the Convention should require "measures to secure the prohibition and immediate elimination of the worst forms of child labour". It is this obligation laid down in the operative part of the Convention from which the title has been derived. The title will, of course, eventually reflect the final decisions to be taken by the Conference.

Concerning the fourth preambular paragraph, a question was raised in the Committee's Drafting Committee about the meaning of "removal from work" in the second of the two paragraphs and in Article 7, paragraph 2(b), and whether the intent was to remove children in the worst forms of child labour from such forms or from all work.

A substantial number of replies want the insertion of "such" before "work", arguing that the purpose of the new Convention is to focus on the worst forms of child labour and that it should not interfere with work allowed under Convention No. 138. While some note that in many cases it would be desirable for children who are removed from the worst forms of child labour to be rehabilitated, attend school and no longer work, this might not be practical in all circumstances, and therefore there should be the possibility of older children switching to acceptable work.

Those who want to retain the reference to work in general, however, strike the balance the other way. Children in the worst forms should not be moved around the labour market. Moving them into other work could carry with it the threat of a return to the worst forms or prevent them from being properly rehabilitated or given a chance of obtaining an education. Given the difference of opinion, the text has not been changed, but it is a matter which the Conference may wish to consider.

Fifth and seventh preambular paragraphs

The Office has made changes to the fifth and seventh paragraphs beginning "Recalling ....". The reference to the Convention on the Rights of the Child has been given more emphasis in a separate paragraph. The other references have been regrouped to give more prominence to the legal documents. The Declarations and Programme of Action have been separated into one paragraph, now the eighth preambular paragraph.

Several commentators argue for deletion of the references to the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development, 1995, the Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995, the Human Resources Development Convention and Recommendation, 1975, as well as the Declaration on Equality of Opportunity and Treatment for Women Workers, adopted by the International Labour Conference in 1975, in favour of retaining only the most significant and particular legal instruments. Some additions were also suggested. Except for the reordering of these provisions, the Office has not made changes, leaving the decision to the Conference. However, it invites the Conference to consider a shorter, more focused Preamble.

Title

There are a few suggestions to change the title, for example by deleting the reference to "immediate" elimination. Since the title is drawn from the obligation laid down

in the Convention, it has been maintained and it is left for the Conference to decide, depending upon the final text. It is suggested, however, that "immediacy" of action is a distinguishing feature of the new standards and is thus a clear indication of their purpose.

Article 1

Each Member which ratifies this Convention shall take measures to secure the prohibition and immediate elimination of the worst forms of child labour.

Observations on Article 1

Austria. Insert after the word "measures" the words "under Articles 5 to 8". This would make it clear that Articles 5 to 8 apply only to member States which have ratified the proposed Convention.

Bolivia. National legal provisions specify the types of work prohibited for minors, which will be elaborated on by a forthcoming Children's and Adolescents' Code.

Bulgaria. Agrees.

Ecuador. Agrees.

Egypt. Supports the text of the Article, but it should come after Articles 2 and 3, since it is more convenient to have the definitions at the beginning of the proposed Convention before the main provisions.

Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees.

Jordan. Federation of Jordanian Chambers of Commerce. National legislation prohibits the employment of children under 17 in activities that are dangerous, exhausting or harmful to their health. However, these laws do not conform to the requirement to take immediate measures to secure the elimination of the worst forms of child labour.

Mexico. Mexico favours a Recommendation only and this should read as follows in it: "Each Member shall take the necessary measures for the immediate prohibition and progressive elimination of the worst forms of child labour."

Morocco. There is a discrepancy between the reference to the "effective elimination" of the worst forms of child labour in the second paragraph of the Preamble and the reference to their "immediate elimination" in Article 1. This could lead to conflicting interpretations, and the text should therefore only refer to one of these two terms.

Norway. The phrase "take measures" seems unnecessarily indecisive. In Article 7 the phrase "take all necessary measures" is used. It is difficult to see why the implementation obligation is weaker in Article 1 than in Article 7, when the substance of the obligation is the same.

Peru. Given the country's present social and economic situation, it has to allow minors to work from the age of 12, with the express authorization of the competent authority and provided it does not interfere with their school work or development. However, Peru intends to work towards the progressive elimination of child labour.

South Africa. Supports the proposed text.

Spain. It is not realistic to secure the immediate elimination of the worst forms of child labour. It is one thing to adopt immediate measures and another to eliminate immediately the reality of child labour in its worst manifestations, which requires time, and above all, the elimination of poverty. To state this is tantamount to saying that all ratifying governments shall take measures to secure the immediate elimination of crime or drug trafficking. The following qualified formulation is suggested: "Each Member which ratifies this Convention shall take measures to secure the prohibition and promote the immediate and effective elimination of the worst forms of child labour."

Syrian Arab Republic. Move the word "immediate" to in front of "measures", to give the text greater flexibility.

United States. The correct approach to the proposed Convention is to focus on immediate and comprehensive action for the effective elimination of the worst forms of child labour, thus the following formulation is proposed: "Each Member which ratifies this Convention shall take immediate and comprehensive measures to secure the prohibition and effective elimination of the worst forms of child labour."

Office commentary

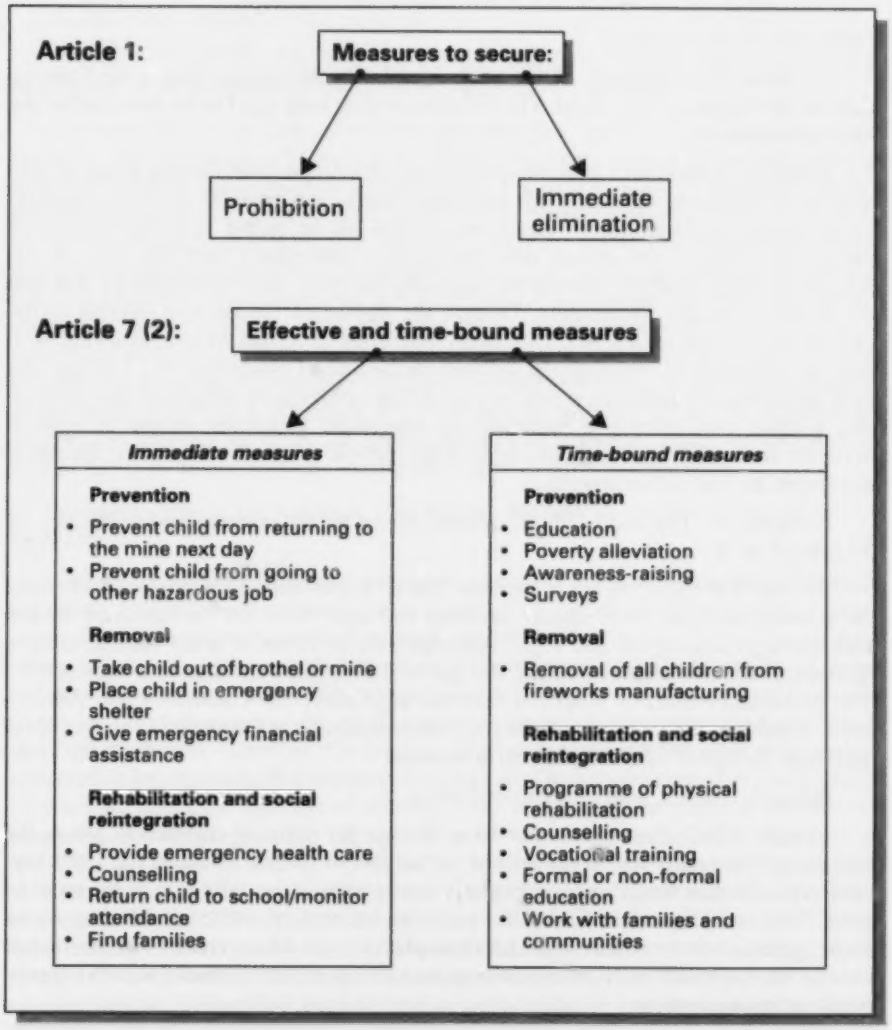
The comments on this Article are not numerous, implying its general acceptance. However, there is not a common thread among those that did comment. Some support it as it is, one prefers a stronger formulation such as "all necessary measures", others refer to the necessity for more progressive action and yet another suggests that it be aligned with the wording of the Preamble to refer to immediate and comprehensive measures to secure the prohibition and "effective" elimination, instead of "immediate" elimination, of the worst forms of child labour.

Concerning the meaning of "immediate", the Office notes the dictionary definition, which assigns the meaning of done at once or without delay.

In the light of the comments also made on the provision concerning "time-bound" measures in Article 7, there seems to be considerable support for the emphasis being placed on immediate action or measures. (There is also distinct support, however, especially among workers' organizations, to maintain the reference to "immediate" elimination, on the understanding that some time-bound measures are also required.) The spirit of the Article suggests that immediate measures are required to achieve the goal of effective elimination; however, the text could be understood as allowing a certain time for measures to be taken but requiring their result to be immediate. The meaning might be clarified by placing the word "immediate" before the word "measures", and referring to "effective" rather than to "immediate" elimination (see below).

The rationale for the new instruments has been that there are forms of child labour that cannot be tolerated and therefore cannot be subject to progressive elimination. This is consistent with the resolution concerning the elimination of child labour adopted by the International Labour Conference in 1996 which stressed, within the context of the progressive elimination of child labour, the need to immediately proceed with the abolition of its most intolerable aspects. To immediately proceed implies taking immediate measures without waiting for progress on achieving longer-term goals such as universal compulsory education and poverty alleviation.

At the same time, effective elimination would seem to require both immediate and time-bound measures, and the replies reflect a coalition around this view. Immediate measures would include, for example, removal from intolerable situations. As soon as children are found, for instance, in bondage, in a brothel or deep in a mine, they are to be removed and emergency measures, if nothing else, are to be taken until further assistance and rehabilitation can be provided. Other measures could then be taken, for example for prevention, that could require a certain time frame for implementation and should be time-bound, as stated in many of the comments. Prevention, rehabilitation and social reintegration as called for in Article 7 could have immediate and time-bound aspects. Some examples are given in the box.



The Office has not introduced changes, but invites the Conference to consider which of the adjectives in brackets best expresses the intent in the following proposition:

Each Member which ratifies this Convention shall take [immediate] measures to secure the prohibition and [effective] [immediate] elimination of the worst forms of child labour.

Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Observations on Article 2

Australia. The definition of "child" is not exactly the same as that in the Convention on the Rights of the Child. This is an issue that may need to be revisited in the second discussion.

Bahrain. Several ILO minimum age Conventions provide various types of protection for children, especially for hazardous work, and prohibit overtime employment, paying children wages based on piece-work or output and other forms of protection. These Conventions must be legally harmonized with the text of this Article to avoid conflict between the ages stipulated in other Conventions and that set by the proposed Convention. Despite the degree of flexibility available in the provisions of Convention No. 138, many countries have had trouble ratifying it. It may be necessary to reconcile the differences between Convention No. 138 and this Article to promote ratification and go beyond the compulsory education age limit, so that a child may receive a minimum of education. Countries should be able to derogate from this Article, according to their specific economic situations, degree of development and circumstances.

Bangladesh. The term "child" should apply to all persons under the age of 14 instead of 18.

Bolivia. It is correct to apply the term "child" to persons under the age of 18, since the protection of the State should last until that age. From the viewpoint of human biological, psychological and social development, however, it is not correct, since a distinction should be drawn before the age of 18 between children and adolescents. The preliminary draft of proposed national legislation, the Children's and Adolescents' Code, considers any human being from conception to the age of 12 to be a child and from the age of 12 to 18 to be an adolescent.

Bulgaria. Agrees with the proposed texts.

Canada. CEC. The selection of 18 as the age for defining children to whom the proposed Convention will apply will be the subject of further debate at the 1999 Session of the Conference. This is particularly so concerning the definition of the types of work "likely to jeopardize the health, safety and morals of children". Many governments appear to favour exclusions, for example for cases where children under 18, but over a stated age such as 16, receive adequate training and are provided with the appropriate safety equipment.

Croatia. Replace "shall apply to" with "shall mean" to be in accordance with article 1 of the United Nations Convention on the Rights of the Child and to clarify the definition of the term – child".

Czech Republic. Federation of Entrepreneurs in the Construction Industry. When defining the minimum age for work, including light work, there should be a distinction between "children" and "teenagers".

Ecuador. Agrees.

Egypt. Agrees, as it is in accordance with the definition of "child" under Egyptian law.

Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees.

Finland. TT and PT. The age of 18 is so high that it could potentially hamper ratification of the proposed Convention in a number of countries.

Germany. BDA. In view of the differing practical and legal situations in some countries, the definition of "child" as any person under the age of 18 is unnecessarily strict and could be an obstacle to implementation and ratification. A definition allowing a gradual approach should be adopted instead. Based on the wording of Article 2, paragraphs 4 and 5, of Convention No. 138, countries whose economies and educational facilities are insufficiently developed (or, in the wording of article 19(3) of the ILO Constitution, "those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different") might be allowed for the purpose of this Convention initially to define as "children" all persons under the age of 16. Reports submitted under article 22 of the ILO Constitution will then be required to indicate whether the reasons for limiting the scope of application in this way still subsist or whether no further use is to be made of this exemption clause as from a stated date.

Hungary. Union of Agrarian Employers. Include an additional category for juveniles.

Ireland. ICTU. The following three main concerns have been raised about setting the age at 18: (i) general concern over the impact of the new Convention on employment of persons above the basic minimum age for employment, 15 (or 14) years, and below 18 years; (ii) the possible impact on the involvement of persons under 18 years in vocational training, especially where trainees are involved in activities in workplaces; and (iii) the potential for conflict between the provisions of the new Convention and "age of consent" laws (i.e. the lawful age for sexual activity) in several countries, concerning involvement in commercial sexual activity/prostitution of persons under 18 years but above the legal age of consent. Concerning the general impact on employment and vocational training, the new Convention would complement Convention No. 138. The provisions in Convention No. 138 concerning employment/training of those between 15 (14) years and 18 years of age in non-hazardous activities would be taken into account in the application and interpretation of the new Convention. In any case, the provisions contained in the current draft are very similar to the existing provisions in Convention No. 138, as the 18-year benchmark only applies to the worst forms of child labour. Concerning age of consent, while national law may set an age lower

than 18 years for lawful sexual activity (and thus potentially for commercial sexual activity/prostitution), commercial sexual activity would in any case fall within the definition of hazardous work (owing to the potential for infectious disease, violence, etc.). To this extent, the new Convention would, in effect, reiterate the meaning of the existing provisions in Convention No. 138.

Jordan. The term "child" should apply to all persons under the age of 16.

Amman Chamber of Industry. The age should be 16 because traditionally in Jordan, as in other developing countries, a child who reaches the age of 16 is deemed fit to undertake some forms of labour. To set the age at 18 does an injustice to children in the 16-18 age group, especially those who cannot join educational institutions. Failure to employ them represents a social burden, especially as unemployment leads to vagrancy and behavioural and moral deviance. The new Convention should allow for the employment of adolescents in developing countries in appropriate work that would not exhaust them. Vocational training institutions should be made to accept all those over the age of 15, which requires extending the scope of activities in these institutions and providing the young people with technical and financial support. Children in the 16-18 age group could be employed in different handicrafts for a limited number of hours a day while protecting their social rights by enrolling them in vocational training institutions.

Malaysia. See comment under Article 3.

Mexico. Insert a heading "Frame of reference" before this provision. One of the main obstacles to ratification of Convention No. 138 is that in some countries the minimum age is lower than that set in the Convention. Therefore the minimum age in the proposed instruments should be flexible according to those fixed by national legislation or, in any case, reflect those in Convention No. 138. Considering that the 86th Session of the Conference adopted a resolution concerning youth employment, which includes young persons between 15 and 24 years of age, fixing the age in the new instruments at 18 years could lead to confusion given the different ages in national legislation. The age limits for hazardous work in Convention No. 138 should serve as an example for child labour and are applicable to many countries. There are activities considered as criminal offences which are punishable irrespective of the age of the person committing them. To set a general minimum age of 18 years could be interpreted as condoning these activities for those aged over 18 years. This Article should be inserted after Article 3 and separated into two parts. The first part should provide that for activities considered as the worst forms of child labour in Article 3(d), account should be taken of the provisions on the minimum age for hazardous work in Article 3 of the Minimum Age Convention, 1973. The second part should provide that for the illicit work and the criminal activities described in Article 3(a) to (c), the term "child" shall apply to all persons under the age of 18. Mexico favours a Recommendation only, thus references to Articles should be replaced by references to Paragraphs throughout.

New Zealand. NZEF. For clarity, the proposed Convention should state what upper age limit is to apply with respect to the word "child".

Pakistan. Fixing the age limit at 18 may not be suited to the economic, social and legal systems of most member States, including Pakistan. For those member States which have economic and social conditions that are not ripe enough, it will be difficult

to comply with the proposed instruments. An inflexible limit of age 18, accompanied by a very broad definition of what constitutes the worst forms of child labour, may inhibit the ability of a number of member States to ratify or accept the proposed Convention or Recommendation. Thus, fixing an age limit could be left to member States to establish in accordance with national law and practice.

South Africa. Supports the proposed text. The South African Constitution defines "child" as all persons under 18.

Spain. Applying the term "child" to all persons under the age of 18, irrespective of whether they have attained majority or the age of emancipation, is too rigid, especially since the provisions of the proposed Convention do not give any other indications as to age and may contradict those of paragraph 3 of Article 3 of Convention No. 138, which allows persons aged 16 to perform hazardous work under certain conditions. Moreover, since the proposed Convention deals with matters that are purely criminal in scope (illegal activities, prostitution, pornography, drug trafficking, etc.), the rigid definition of a child as any person under the age of 18 may give rise to serious legal difficulties in ratification. In defining the term "child" a distinction should be drawn between the worst forms of child labour set out in Article 3, subparagraphs (a), (b) and (c), and the hazardous work referred to in subparagraph (d). Both groups need protection, but not in the same way. Regarding the work described in subparagraph (d), there should be a connection between the age limit laid down for compulsory education and the minimum age for hazardous work. It should be borne in mind that the proposed Convention lays down minimum standards and that a strict limitation to age 18 may give rise to problems for States in ratification or application, unless reference is made to the "worst forms of child labour" in Article 3(a), (b) and (c) only.

United States. Supports the proposed text, to the extent that the definitional aspect of the proposed Convention is not expanded.

Office commentary

The majority of observations support the provision as it is, and so no change has been introduced. However, several object either to the age itself, or to referring to persons under the age of 18 as children, preferring that a distinction be made between children and young persons or adolescents. The definition is for "the purposes of this Convention" and thus is not offering a general definition of "child". It refers to all persons under the age of 18, which includes categorizations of persons under that age such as children, young persons and adolescents.

Some objections to age 18 appear to be based on a misunderstanding about the designation of age 18 for the purposes of the proposed Convention. The proposed Convention does not apply to all work by children, but only to the worst forms of child labour. Because the subject of the proposed Convention is work that is so intolerable, so bad that no child or young person should be engaged in it, the age of 18 was chosen to be consistent with the higher minimum age laid down in Convention No. 138 for hazardous work and the general definition of "child" in the Convention on the Rights of the Child. It does not in any way affect the minimum ages in Convention No. 138, which allows lower ages, down to 12 or 13 for light work.

This issue is also addressed in the commentary on Article 3.

Article 3

For the purposes of this Convention, the expression "the worst forms of child labour" comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illegal activities, in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties;

(d) any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

Observations on Article 3

Argentina. The proposed Convention should include a ban on the participation of children in armed conflicts. Subparagraph (c): Supports a definition of drugs as worded in article 33 of the United Nations Convention on the Rights of the Child. Subparagraph (d): Add "or (compulsory) basic education" after "morals".

Australia. It is noted that the discussion of the issue of children in armed conflict, as combatants, has been deferred until the second (1999) discussion. Participation of children in armed conflict is an important issue and is certainly appropriate for discussion. Subparagraph (c): Prefers the term "illicit" to "illegal" because "illicit" could cover activities that may be lawful in some States but not permissible with respect to the objectives of the proposed Convention. "Illegal" would not cover cases in which there is a minor illegality in what is essentially a lawful activity and therefore not in the worst forms of child labour. Supports the simplification of the text to refer to "production and trafficking of drugs as defined in the relevant international treaties".

Austria. Subparagraph (b): Since the whole purpose of child pornography is to make money by satisfying persons with abnormal sexual tendencies, the list should include the consumption of child pornography. The same applies to prostitution, in so far as consumption is not already included in the concept of "use ... for prostitution". This wording would place States under the obligation to take measures against prostitution in connection with sex tourism or child pornography over the Internet, for example as is done by some European countries, which would also help the main countries concerned in Asia and Latin America to combat these extreme forms of exploitation of children. Subparagraph (d): Welcomes the reference to work or activity which is likely to jeopardize the health, safety or morals of children. This makes it clear that it is meant to include work in which such hazards are probable, but do not yet have to be expressly proven. Therefore, proposed amendments referring to clearly proven hazards (for example, which "jeopardize" instead of "are likely to jeopardize") should be rejected in the discussion. The activities listed in Paragraph 3 of the proposed Recommendation should be included in Article 3 of the proposed Convention, at least by way of examples. Alternatively, a reference to particularly hazardous branches of industry should be made in brackets, such as textiles, mining, ceramic and glass industries, match and fireworks industries and deep-sea fishing. At least in regard to hazardous work a distinction should be drawn between children and young persons following Convention No. 138, and the proposed instrument should provide that hazardous work

shall be prohibited for children under a certain age, but may be performed under certain conditions by young persons. Wider ratification could be achieved, since this would make it clear in express terms (and not only by interpretation as is now the case) that certain work does not have to be prohibited for persons aged over 16 just because the proposed Convention applies to all persons under 18 years of age.

Bahrain. The introductory paragraph should read: "For the purposes of this Convention, the following could be considered as 'the worst forms of child labour':". The worst forms of child labour should not be limited to the forms explicitly listed but should be a list of examples to which others could be added. This proposed amendment would be in line with the text of paragraph 2 of Article 4, which allows countries to revise the list.

Belgium. The Government prefers to abstain at this time on the issue of children in armed conflicts, as combatants, as child soldiers or in military activities, as constituting one of the worst forms of child labour. It is more appropriate to wait for the results of the current discussions of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. Paragraph (c): Agrees with the simplified formulation of the "in particular" phrase proposed by the Office.

CNT. The reference to "work and activities which expose children to physical, emotional or sexual abuse" in Paragraph 3(a) of the proposed Recommendation should be in Article 3 of the proposed Convention instead. Subparagraph (d): Add a reference to the "elimination of the use of children in any type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize their education, at least up to the statutory age of compulsory education set by relevant national legislation".

Benin. The use of children as child soldiers is a practice that exists in various countries involved in armed conflicts. It is a specific and well-known situation which is likely to jeopardize their health, safety and morals. There should be an explicit reference to the use of children in armed conflicts or in military activities as constituting one of the worst forms of child labour. Subparagraph (d): This includes all unspecified or unknown types of activity.

Bolivia. A clear distinction should be drawn between criminal offences and child labour. There are activities in which the child is a victim or object of the work done by other persons, while in other cases the child is the worker. Thus, the sale and trafficking of children and prostitution are criminal offences, the victims of which are children, and should not be considered as "worst forms of child labour".

Botswana. Prefers an explicit reference to the involvement of children in military activities. Due to the hazardous nature of such activities, the involvement of children in them requires serious action aimed at halting the practice.

Brazil. It does not seem appropriate to include the participation of children in armed conflicts in an instrument that aims to regulate child labour. The subject is already amply covered in the United Nations Convention on the Rights of the Child (article 39), and in paragraph 25 of the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s. More specifically, the Vienna Declaration and Programme of Action of 1993 provides, in paragraph 50, that: "The World Conference on Human Rights strongly supports the

proposal that the Secretary-General initiate a study into means of improving the protection of children in armed conflicts ... Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines ... The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces." Lastly, resolution 1994/91 of the Commission on Human Rights established the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, a decision supported by Brazil.

Bulgaria. Article 3 should explicitly provide that the participation of children in armed conflicts as combatants or as child soldiers, or their use in military activities, constitutes one of the worst forms of child labour. It represents a threat to their lives. Subparagraph (c): Supports replacing the word "illegal" with "illicit". This should provide a much broader legal coverage for various cases that are not considered as criminal acts by the national legislation of different countries. This change of terminology is preferable for the establishment of penal and other sanctions.

Canada. The Government questions the need for a reference to child soldiers in the proposed Convention, given the ongoing discussions on children in armed conflicts within the Convention on the Rights of the Child and its proposed optional protocol. However, if a reference to child soldiers is included, it is preferred that language is used which characterizes the use of children in active combat or the participation of children in hostilities as one of the worst forms of child labour, but not language which calls for its criminalization in domestic law. Subparagraph (a): Would like confirmation that "sale and trafficking" should not be interpreted to cover issues outside the worst forms of child labour, such as adoptions. Subparagraph (c): This is very broad and vague because of the use and placement of the undefined term "illegal activities". Suggests instead the following: "the use, procuring or offering of a child in the production and trafficking of narcotic drugs and psychotropic substances, as defined in the relevant international treaties". If necessary, "and for other illegal activities" could be added at the end of the Article; however, there should be confirmation that this would refer to activities designated illegal in national law. Disagrees with replacing "illegal" with "illicit", as this is an undefined term. Subparagraph (d): Given the broad nature of this subparagraph, and the provisions of Paragraph 11 of the proposed Recommendation, the Government would like confirmation that there is no requirement for the activities in this subparagraph to be criminalized as long as there are other appropriate penalties, such as administrative, civil and labour penalties.

CEC. Subparagraph (c): The distinction between "illegal" and "illicit" activities and the resulting implications are difficult to comprehend, thus retain "illegal" and add "illicit" to cover those activities which are prohibited by national laws as well as those which, though not the subject of specific prohibition, are nevertheless considered illicit (with its moral connotation). Limiting the applicability to "illicit" could generate endless academic debate without the effective elimination of activities sought to be addressed by the subparagraph. The Office's proposal to simplify the "in particular" phrase requires a careful review of the definition of "drugs" in the relevant treaties. Regarding the issue of children in armed conflict, relying on the phrase "likely to jeopardize the health, safety or morals", in subparagraph (d) is not sufficient to protect children from some of the excesses of war witnessed in recent years involving young children. Without specific reference to this modern-day blight

governments could inadvertently or intentionally fail to address this serious problem. It is suggested to prohibit separately the participation of children in armed conflict as combatants (whether formally as members of armies or militias or on a more ad hoc basis) and in non-combat military activities which are likely to jeopardize their health, safety or morals. In this way, children could be air and sea cadets though under the age of 18. More thought is required on this issue to ensure that the excesses are clearly prohibited while retaining a Convention that can be ratified. The CEC would thus support a clear reference to the issue of children placed in intolerable situations owing to armed conflicts in the definition of the worst forms of child labour; however, as employers do not have particular expertise or knowledge of the scope of the broader issue of "military activities", it would seek the advice of the Canadian Government's experts on current military activities involving children under 18 in Canada.

CLC. Presses for the inclusion of a reference to "work which jeopardizes access to basic education" in the definition of the worst forms of child labour, and for the inclusion in the proposed Convention of the detailed definition of hazardous work contained in the proposed Recommendation, to specify more clearly what should, as a minimum, be considered as hazardous work.

Chile. Regarding the participation of children in armed conflicts, agrees that this specific situation would come under Article 4 as a type of activity or work that is likely to jeopardize the safety, health or morals of boys or girls. Nevertheless, it is important that an agreement be reached to mention these types of situation, particularly given their gravity and the irreparable damage they cause boys and girls who are involved in them. It would be useful to mention them to give an even stronger negative moral connotation and to raise awareness about their effects on children. Subparagraph (d): Add the adjectives used in article 32(1) of the Convention on the Rights of the Child, which states: "States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." This would clarify more precisely what is meant by "the worst forms of child labour", at the same time as bringing the proposed Convention more into line with the Convention on the Rights of the Child. In addition, the term "physical integrity" should be added after "health", to provide for specific situations of physical exploitation to which boys and girls may be exposed. The term "image" should also be added to the definition so that the worst forms of child labour include those that harm the image of boys and girls, as image is an asset belonging to children which can be harmed or undermined by being shown, for example, on television, in advertisements or in connection with controversial issues. This damage to image becomes a stigma for the child throughout development, with a series of negative repercussions which the child is unable to evaluate when involved in situations such as those being considered here. Agrees with the inclusion of a direct reference to "the use, procuring or offering of a child for the production and trafficking of drugs", linking these activities to the term "illicit". The term "illicit" makes it easier to assess this type of activity, as it covers a greater number of situations (as a result of its moral connotation) and at the same time allows this subparagraph to be applied in countries where the production and trafficking of narcotic drugs has not been declared illegal.

CONUPIA. Subparagraph (c): This should be applied in a broader form taking into account anything relating to criminal activities, as there is a tendency for criminal networks to use children to carry out criminal activities, since children do not, under national law, bear criminal liability for such acts. It would be very useful if the proposed Convention could help to ensure that progress is made towards providing penalties for using children in criminal activities, for which there is inadequate provision in international law. Subparagraph (d): Replace "health" with "overall development of the child", as a broader concept of "health" should be applied, rather than one which is apparently based on strictly biological criteria and fails to take into account aspects relating to psychological and social development. The use of children in armed conflicts should be included under the worst forms of child labour. A reference could be made to the Convention on the Rights of the Child as the basis for the prohibition of the use of children in armed conflicts, given that it protects children in situations which are detrimental to their welfare and development. It would also be possible to cite research in psychology which has shown the damage that children may suffer in this type of social conflict.

Croatia. The Article refers to different forms of work and conditions. It should refer to the work of children instead of criminal offences, particularly because Paragraph 11 of the proposed Recommendation states that the forms of child labour listed in clauses (a) to (c) should be regarded as criminal offences. It is unclear who the perpetrators are and who should be punished. It could be implied that children should be punished. Therefore the changes below should be made. Subparagraph (a): Replace "practices" with "work under the conditions" and replace "forced or compulsory labour, debt bondage and serfdom" with "and debt bondage, forced or compulsory labour and serfage". Subparagraphs (b) and (c): Replace "the use, procuring or offering of a child" with "the engaging of a child used, procured or offered". Subparagraph (c): Replace "for the production" with "in the production".

Working Group of Trade Union Confederations. Insert clauses (a) to (e) of Paragraph 3 of the proposed Recommendation before subparagraph (d) of this Article to provide greater legal force and a clearer explanation of the expression "the worst forms of child labour".

Czech Republic. Subparagraphs (a) to (c): These types of work probably constitute criminal offences in most countries, as is the case in the Czech Republic.

Denmark. The term "child soldier" should be part of the definition. In 1998, Denmark decided to raise the age limit for military service in the armed forces to age 18. It had been possible for 17-year-olds to perform duty as private first class/private first class trainees, conscripts and volunteers in the Home Guard. As of 1 January 1999, conscripts will not be able to be called to the first collective service until they reach age 18. The minimum age for the Home Guards will be changed to 18 with the next amendment of the Home Guard Act. Thus, there is no objection to including "all forms of military activity", provided, however, that the age limit of 18 in Article 2 is not raised. The wording "all forms of activity which involve the use of violence" and "all forms of military activity" are suggested. The final decision should be seen in the light of the discussion in the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. Subparagraph (d): Add clauses by moving Paragraph 3 from the proposed Recommendation to the proposed Convention.

Danish Employers' Confederation (DA). Lacking access to education is not comparable to the crude abuses of children covered by this Article, therefore, lacking access to education should not be part of the definition. Light work is acceptable for persons under the age of 15, when it takes place under acceptable working conditions.

Federation of Danish Trade Unions (LO). Add lacking access to basic education as part of the definition of the worst forms of child labour in a new subparagraph.

Ecuador. Eighteen-year-olds are generally already undergoing military service or instruction, whether compulsory or optional. This type of military instruction should therefore not be considered as one of the worst forms of child labour. Military or pre-military instruction is voluntary or optional, so there is no manifest intention to disregard children's rights when they participate in this type of activity. Voluntary or optional pre-military instruction involves children between the ages of 14 and 18. It is therefore suggested that such instruction be permitted from a specified age, from the age of puberty recognized by law, or from the end of compulsory education. In so far as military or pre-military activity is voluntary and authorized, the kind of strictly civic work involved warrants special treatment, and it would be difficult to stipulate exactly to what extent it might be said to constitute forced labour.

Egypt. This should be moved to become Article 1. Subparagraphs (a) to (c): These forms of child labour do not exist in Egypt. If they do exist, they would be considered contrary to morality and would fall under the provisions of penal law.

Federation of Egyptian Industries. Subparagraphs (a) to (c): Prohibiting these activities is in harmony with the views of the social partners, and more specifically the teachings of the holy faiths that ban exploitation of children and their exposure to such activities. In Egyptian society, thanks to its values and traditions, such practices are unknown. The Egyptian Penal Code penalizes such child exploitation.

Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees with the proposed text.

Estonia. The use of children in the military or for military activities could be added to subparagraph (a) or added as a separate new subparagraph (e).

Estonian Association of Trade Unions. Agrees with the Government.

Ethiopia. Involving children in armed conflicts should be included as one of the worst forms of child labour, as the practice fulfils all the terms indicated in the proposed instruments. It can severely affect and jeopardize the health, safety, morals, and all other aspects of children's development, including their education. Above all, such practices are becoming common in the African continent, where children have been forcibly drilled in such phenomenon and suffer from the atrocities evolving from it.

Finland. At the June 1998 Session of the Conference, Finland and other Nordic countries expressed reservations over leaving the definition of dangerous work to individual national authorities. The parties to the new Convention should agree on a common definition of what is meant by the worst forms of child labour. The activities referred to in subparagraphs (a) to (c) are crimes under Finnish law. The forms of dangerous work detailed in Paragraph 3 of the proposed Recommendation should be included in the proposed Convention, where appropriate, for instance at the end of Article 3. The forms and conditions of dangerous work should be listed differently, separating those which are totally prohibited from those which can be done if special

measures are taken to ensure safety. A blanket prohibition could have unfortunate consequences for children by preventing them from studying and preparing for a trade. Subparagraph (b): Particularly when considering the content of Article 3 from the perspective of sexual equality, there are many situations which could be covered by this subparagraph, such as the sale and trafficking of children, the use of children and young people in the sex industry in general (various different forms) and the enticement with false promises of children and young persons into situations which could possibly lead to their involvement in prostitution and/or pornography. Thus the effectiveness of this subparagraph will largely depend on how it is interpreted. Subparagraph (c): The Government supports the proposals made by the Office to use "illicit" and the changes after "in particular". Subparagraph (d): Add "work which jeopardizes access to basic education". This is not intended to mean that every ratifying State would have to provide education, but work which prevents a child from taking advantage of available education should be included in the definition of the worst forms of child labour.

TT and PT. Subparagraph (d): Jeopardizing the health, safety and morals of children can be manifested in different degrees. The most immediate evils should be tackled first.

France. MEDEF. Underlines the necessity to ensure that the specific situation of apprentices is taken into consideration so that it does not fit the definition of the "worst forms" of child labour.

CFDT. A specific reference to children in armed conflicts should be included. The detailed definition of hazardous work should be transferred from the text of the proposed Recommendation to the proposed Convention. The expression "the worst forms of child labour" should also comprise "any type of work which jeopardizes access to primary education". Subparagraph (b): The CFDT continues to express its concern regarding the use of the word "prostitution" in an ILO Convention. It would be more appropriate to refer to "sexual exploitation, whether commercial or not".

Germany. Subparagraph (c): Supports the proposals made by the Office, in particular to replace the term "illegal" with "illicit".

BDA. Subparagraph (c): Delete "psychotropic substances", to avoid complicating this provision. Agrees with the simplified formulation of the "in particular" phrase proposed by the Office. Subparagraph (d): To make it clear that the reference is not to any child labour but to the "worst" forms of it, the hazardous nature of work should be more restricted by inserting "to a particular degree" before "jeopardize"or "to such an extent as not to be tolerable under any circumstances" after "morals of children". Furthermore, the subparagraph should refer to "the life, health or morals" of children, rather than to "the health, safety or morals". Unlike "health" and "morals", "safety" is not in itself a right susceptible of legal protection (safety for what?). It is vague and as such could lead to differences of opinion regarding interpretation. Prohibiting the use of children in armed conflicts, as combatants, as child soldiers or in military activities appears to be unnecessary, since such cases are already covered by subparagraph (d).

DGB. During the first discussion the DGB favoured a detailed definition of hazardous work in the text of the proposed Convention, as defined in the proposed Recommendation, to state more specifically what should be considered, as a minimum, hazardous work. The Conference may not accept this view in 1999, thus the detailed definition should remain in the proposed Recommendation. In this case, the detailed

definition could in practice continue to apply to the proposed Convention, since the Committee of Experts on the Application of Conventions and Recommendations normally takes the provisions of relevant Recommendations into account when interpreting the meaning of a Convention. Subparagraph (b): Prefers the term "commercial sexual exploitation" in this context. However, during the last session of the Conference there were objections to this on the grounds that forms of sexual exploitation that do not involve any commercial transactions could be excluded. If no agreement can be reached on another appropriate wording, the present draft will be accepted. Agrees with the Office's proposal of the term "illicit" and the resulting amendments. During the first discussion the DGB proposed that a special reference be made to children in armed conflict in the proposed Convention, but this was not retained. The Committee agreed to discuss this subject again in 1999. The DGB agrees with the Office's view that this form of exploitation would in any case be covered by the definitions of forced labour and hazardous work or activities likely to jeopardize their health, safety or morals. The importance of education, in particular of access to basic education, is mentioned in several parts of the proposed Convention and Recommendation. However, the proposal to include work which jeopardizes access to basic education in the definition of the worst forms of child labour was rejected. This will be an important point for discussion in 1999 and the Workers' group will press once again for the inclusion of this aspect in the definition. It must be made clear, however, that the intention is not for the proposed Convention to require governments to ensure universal basic education, but rather for work which by its nature systematically bars children's access to basic education to come under the definition and hence to be verified in the context of the procedure for the application of the Convention under Articles 4 and 6.

Greece. Opposes the participation of children in military service, armed forces or armed conflicts. Subparagraph (c): Agrees to the amendment suggested by the Office to use the word "illicit" and to the simplification of the subparagraph.

General Confederation of Small and Medium-sized Entrepreneurs, Craftsmen and Tradesmen of Greece. Accepts the use of the word "illicit". Proposes to add a specific subparagraph (e) to prohibit the use of children in armed conflicts, as combatants, as child soldiers or in military activities. This issue should be mentioned in a separate subparagraph as in the case of child prostitution, slavery, sale and trafficking of children, serfdom and the use of children for illicit activities.

Haiti. As regards the participation of children in military activities, it is important to adopt appropriate legal provisions.

Hungary. Union of Agrarian Employers. In defining the worst forms of child labour categories used for vocational education should be used. Specifying age groups for the different activities would allow for fine-tuning of regulations.

India. Subparagraph (a): Exacting of all forms of forced or compulsory labour is prohibited as a penal offence under the Forced Labour Convention, 1930 (No. 29). The above Convention also envisages suppression of the use of forced or compulsory labour in all its forms, irrespective of age, in the shortest possible time. This Convention has achieved one of the highest levels of ratification and acceptability. In view of the above, prohibition and suppression of forced and compulsory labour need not be included. Subparagraph (d): The worst forms of child labour have been elaborated in subparagraphs (a) to (c) very clearly and specifically without giving any room for

ambiguity of interpretation or representation. After having defined a "child" under Article 2 and the worst forms of child labour under subparagraphs (a) to (c), there is no need to include undefined areas in the definition of worst forms of child labour through subparagraph (d). This will only lead to ambiguity as well as dilution of the already defined areas. Therefore, it is felt that the deletion of this subparagraph, and consequently Article 4, will not undermine the spirit and objective of the proposed instruments. As guidelines to member States in further identifying hazardous work, Paragraph 3 of the Recommendation can remain.

Ireland. ICTU. During the first discussion, the Workers' group proposal to refer specifically to children in armed conflict in the definition was not accepted, but the Committee agreed that this issue would be discussed again in 1999. In any case, the definitions of forced labour and hazardous work or activity which were included in the text would cover this form of exploitation. Subparagraph (b): Prefers to use the term "commercial sexual exploitation". There is some concern, however, that this term could exclude forms of sexual exploitation which do not involve commercial transactions and if it is not possible to find a suitable alternative wording, the ICTU would support the existing draft text. Subparagraph (d): Welcomes the deletion of a restrictive clause which would have limited the definition of hazardous work by referring to work or activity which is so hazardous that children "should not be used or engaged in it under any circumstances". The deletion of this phrase extends the scope of the Convention considerably. The ICTU strongly supports including the current detailed definition of hazardous work (in Paragraph 3 of the Recommendation) in the text of the Convention to specify more clearly what should, as a minimum, be considered as hazardous work. While the importance of education, in particular access to basic education, is referred to in several parts of the proposed Convention and Recommendation, "work which jeopardizes access to basic education" should be included in the definition of the worst forms of child labour. This does not mean that this Convention would impose a requirement on governments to provide universal basic education. The purpose is that work which, by its nature, systematically denies children access to basic education would come within the definition and would thus need to be considered under the tripartite procedures set out in Articles 4 and 6. The ICTU would urge the Government to consider the argument made by the Government member of Sweden during the first discussion "that there was a difference between saying that education was a 'tool' to prevent and address the problem of child labour and its worst forms, and whether the prevention of access to education was so serious a danger as to warrant including it in the definition of the worst forms".[6] The proposed consultative process to determine what falls within the definition of the worst forms of child labour currently considers problems concerning health, safety and morals. It would be inappropriate not to mention education as a criterion when work or conditions of work would result in systematically preventing a child of school age from going to school. This Convention must address this type of treatment.

SIPTU. Subparagraph (d): Whereas Paragraph 2(b) of the Recommendation notes the importance of social reintegration measures which address the educational needs of children freed from the worst forms of child labour, it is regrettable that work which systematically deprives children of access to education at all is not included in the

[6] *Provisional Record* No. 19, para. 162.

definition of the worst forms of child labour. A reference to work which systematically denies the child access to basic education should be added to the definition of "worst forms of child labour". This provision would not require governments to provide universal education. Work which by its nature, owing to the number of hours worked, the time of work or its location, deprives a child of access to educational facilities that would otherwise be available to him or her is without doubt one of the worst possible disservices to the future of that child, as it condemns the child to suffer a permanent handicap as a member of society. It remains a matter of concern that "hazardous work" has not been defined to include the most hazardous form of all, armed combat. In view of the wide-scale use of children in warfare in many parts of the world, the ILO is called upon to add the weight of the proposed Convention to the global effort to eliminate this practice. There is no justification for treating the military differently from all other employers. The definition of "work in an unhealthy environment" in Paragraph 3(d) of the Recommendation should include work that exposes children to risking their lives in military conflict.

Italy. Proposes to divide the Article into more subparagraphs, with a specific reference to pornographic activities as distinct from other forms of illicit activities. Subparagraph (c): Agrees with the use of the term "illicit". Considers it important that the reference to activities related to the production and trafficking of drugs remains in the text of the Convention. Proposes to insert before subparagraph (d) the following text: "the use, procuring and offering of children as combatants or soldiers with a view to their involvement in military activities with the intention of employing these children in war or armed conflicts".

CONFCOMMERCIO. Agrees with the replacement of the term "illegal" with "illicit". It is preferable to mention explicitly in a subparagraph the issue of children in armed conflicts, as combatants or soldiers, as well as their use in military activities. It is insufficient to have a general reference to activities that jeopardize the safety, health and morals of children or to forced and compulsory labour.

CGIL, CISL and UIL. A reference to children in armed conflicts should be included among the worst forms of child labour. The definition of hazardous work in the Recommendation should be moved to the Convention to specify more clearly an initial list of types of hazardous work. Subparagraph (d): Hazardous work should include all kinds of work which could "jeopardize or deny access to basic education".

Japan. Subparagraph (c): Use of "illicit" in place of "illegal" is likely to unnecessarily extend the scope of the applicable activities, and seems to be inappropriate. While issues concerning children in armed conflict, as combatants, as child soldiers or in military activities are important, it should be noted that the debate still continues in the United Nations working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. The working group initially discussed the proposal to raise the minimum age uniformly for participation in hostile actions and military recruitment. After four sessions, however, it failed to reach an agreement because military recruitment ages and the systems of enlistment in the army, for example, compulsory draft systems, volunteer systems, or a combination, differ from country to country. Considering that debate, it is difficult to establish a clearly defined provision that can be agreed upon at the ILO, in particular if such provision applies to all persons under the age of 18. Even if such provision is established, it does not contribute to the solution of the overall problem of the worst forms of child

labour and it may deter many countries from ratifying the Convention. Furthermore, the present draft appropriately addresses the problem because the subject is covered by Article 3(d), if each country so determines in accordance with Article 4. For these reasons, the subject should not be explicitly mentioned in the Convention.

JTUC-RENGO. Subparagraph (c): Replace "illegal" with "illicit". Add a new subparagraph as follows: "work which jeopardizes access to basic education;".

Jordan. Amman Chamber of Industry. The Ministry of Labour in cooperation with employers and workers should establish a list of the worst forms of child labour which should be suppressed immediately. As agreed through consultation with the social partners, other forms of child labour should be left open.

Federation of Jordanian Chambers of Commerce. National legislation prohibits the employment of children under 17 in activities that are dangerous, exhausting or harmful to their health. However, these laws do not conform to the description of the worst forms of child labour in the proposed Convention.

Kenya. COTU. Subparagraph (d): Insert "and systematically" before "jeopardize" and "access to basic education as well as" after "jeopardize". This is to highlight the fact that any work which interferes with or impedes or is an obstacle to the right to education constitutes one of the worst forms of child labour. Furthermore, the right to education implies the development of full human potential, which is a major concern of Kenyan trade unions, who are focused on the quality of the workers of tomorrow. If this amendment is not accepted on the grounds that it imposes on governments the duty to provide universal basic education, the alternative would be to require the national consultations under paragraph 1 of Article 4 to give attention to work which, by its nature, systematically denies children access to basic education by inserting the words "taking into account the right to basic education and" before "relevant international standards".

Republic of Korea. There is some disagreement as to whether the "participation of children in military activities" should be referred to in Article 3. In some parts of the world where the use of child soldiers is a serious problem, eliminating it is a pressing task. The issue of child soldiers goes beyond the reach of this Convention because it would excessively expand the range of labour. Moreover, even if the relevant provision is not directly expressed, protection of children from being used as soldiers would be ensured under subparagraph (a), which prohibits forced labour, and subparagraph (d), as the Office has pointed out. Subparagraph (c): Needs to be changed, considering its excessively broad scope and the content of the other three subparagraphs (a), (b) and (d). Rather than including "in particular for the production and trafficking of narcotic drugs and psychotropic substances" as an example of illegal activities, the provision should be more concrete and limited to the production and trafficking of drugs. The other activities should be included in subparagraph (d). The United Nations Convention on the Rights of the Child, in article 33, only stipulates the prevention of the use of children in the illicit production and trafficking of such substances. In addition, considering that the Convention on the Rights of the Child, which deals comprehensively with the rights of children, does not contain wide-ranging provisions for the protection of children from being used for "illegal activities", and that Article 3(d) of the proposed Convention has a broad scope, it would be inappropriate to include "the use, procuring or offering of a child for illegal activities" as a worst form of child labour to be eliminated. Therefore, subparagraph (c) should be revised as follows: "the

use, procuring or offering of a child for illicit production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties".

Lebanon. Introductory paragraph: Add either the expression "for instance" or "in a non-exhaustive manner" after "the worst forms of child labour comprises", as this Article contains issues that cannot be limited. Subparagraph (c): Add "[and] precursors" after "narcotic drugs and psychotropic substances". Add "[and] the transportation, offering, and distribution thereof in any way whatsoever" at the end of the subparagraph. Subparagraph (d): Add "or is likely to hinder their physical or social development" at the end of the subparagraph, in keeping with the Convention on the Rights of the Child.

Madagascar. The participation of children in military service, armed forces or in armed conflicts would be contrary to the Convention. Subparagraph (c): Prefers to use the words "illegal activities". The "in particular" phrase should be maintained as in the proposed text.

Malaysia. Convention No. 138 defines a "child" as a person below 15 years of age and a "young person" as one between 15 and 18 years of age. Ratifying States of both Convention No. 138 and the proposed Convention will face a problem when determining permissible jobs or employment for a child, since there is no specific definition or a complete guideline that could be applied for "the worst forms of child labour". The implication in the proposed Convention, taking into account Convention No. 138, is that those below 18 years of age are allowed to work but are barred only from engaging in "the worst forms of child labour". Member States with differing cultural and social status should be allowed to determine conditions which could be construed as "the worst forms of child labour". Subparagraphs (a) to (b): In Malaysia, matters raised in the proposed Convention, such as the sale and trafficking of children, pornography, prostitution, etc., are already provided for in legislation that is being administered by government agencies other than the Ministry of Human Resources, including the Police, Social Welfare Department, Religious Department, Women Affairs Department (Hawa) and others.

Mali. Considers the word "illicit" more appropriate than "illegal" because it should provide a much broader coverage for various cases. The use of children in armed conflicts, as combatants, as child soldiers or in military activities constitutes one of the worst forms of child labour and therefore should be mentioned in the text.

Mauritius. Subparagraph (d): Insert the words "growth and development" after the word "safety".

Mexico. After "the worst forms of child labour" insert "referring to economic exploitation of child labour". Replace "comprises" with "should comprise". Separate this Article into two Paragraphs of the Recommendation, as Mexico favours a Recommendation only. The first Paragraph should provide that the expression "'the worst forms of child labour', referring to economic exploitation of child labour, should comprise: (a) forced or compulsory labour, debt bondage and serfdom; (b) any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children". The second Paragraph should include the following: "(1) The situations referring to exploitation of children and considered as criminal offences should comprise: (a) all forms of slavery or practices simi-

lar to slavery, such as the sale and trafficking of children; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illegal activities, in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties. (2) Penalties should be applied for the criminal forms referred to above in accordance with the national law and practice of each Member." Regarding the issue of children in armed conflict, article 38 of the United Nations Convention on the Rights of the Child makes a separate provision on the concept. To include it in the proposed Convention or Recommendation would contradict the scope and age limits of that Convention on the subject.

Morocco. Add another subparagraph before subparagraph (d) to read as follows: "Any type of activity involving children directly or indirectly in armed conflicts."

Netherlands. An explicit reference to children in armed conflicts is not required since they are already covered by this Article. An alternative option might be to add in Paragraph 3 of the proposed Recommendation on hazardous work, a clause on "participation of children in armed conflicts". The relationship between child labour and education is complicated. The FNV and several NGOs believe that "work which jeopardizes access to available basic education" should be included in this Article. Such a proposal is not acceptable to the Government and was not accepted by the Conference in 1998. As an alternative option, the FNV would suggest that under Article 4, paragraph 1, the national consultations give attention to work which, by its nature, systematically denies access to basic education. Some NGOs suggest adding the following clause to Paragraph 3 of the proposed Recommendation: "work that jeopardizes access to available basic education". Such suggestions deserve further consideration. Subparagraph (c): Supports replacing "illegal" by "illicit".

FNV. See Government's reply above.

New Zealand. Subparagraph (b): The wording should be consistent with the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. While a final draft of this definition is not yet available, the draft optional protocol is linked to article 34 of the Convention on the Rights of the Child, and a definition could therefore be based on the language of that article, to read as follows: "(b) the use, inducement, coercion, procuring or offering of a child for unlawful sexual activities including prostitution, the production of pornography or pornographic performances". The above formulation widens the range of sexual activities which might be covered to include situations where the child is not engaged in sexual activity, but where his or her employment is exploited for sexual purposes. Subparagraph (c): While there is no objection to replacing the word "illicit" with "illegal", it is difficult to ascertain whether the change in wording will, in fact, change the meaning. The word "illicit" in English is commonly defined as being an activity that is illegal. There does not, as Report IV(1) would suggest, appear to be any further "moral connotation" attached to the word which would include undesirable activity which is not illegal, and which would exclude an illegal activity which is not necessarily morally reprehensible, for example the breach of copyright. Subparagraph (d): The word "morals" is too subjective, and could be replaced by more comprehensive wording. Accordingly, the following is proposed: "any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the development, health, safety and psychological well-being of children".

Involvement of children in armed conflicts, as combatants, as child soldiers or in a military activity, would fall under subparagraph (d), and therefore a specific reference is unnecessary.

NZEF. Subparagraph (b): Agrees with the Government that for purposes of consistency, this could be worded as article 34 of the Convention on the Rights of the Child. While the NZEF, unlike the Government, accepts the report's argument that the word "illicit" has a more moral connotation than the word "illegal", it does not agree that the use of "illicit" would necessarily cover situations such as drug trafficking not prohibited by national law, while leaving an "illegal" performance in a play where a breach of copyright was involved outside the ambit of the proposed Convention. Something which is illegal must, necessarily, be illicit and though the contrary need not be true, it is still difficult to see how, whatever word is used, a country could take action in respect of an activity which occurred within its borders but which national law did not forbid. Consequently, the NZEF has no particular preference for the use of either word. Subparagraph (d): Disagrees with the Government that the word "morals" is too subjective and would be better replaced by the words "development" and "psychological well-being", since these are words of very uncertain interpretation. It is, for example, an assumption that participation in military service would necessarily jeopardize either a young person's development or her or his psychological well-being or even, provided it were not participation in armed combat, safety and health. It might be supposed, however, that such participation would have a bad effect on the young person's morals, as that term has been, and still is, generally interpreted.

NZCTU. Subparagraph (b): Agrees with the Government that article 34 of the Convention on the Rights of the Child is a more useful formulation that would broaden the scope of the proposed Article. Subparagraph (d): Agrees that the word "morals" is too subjective and supports the wording proposed by the Government. Suggests that "work which by its nature systematically denies children access to basic education" should be added to the definition of the "worst forms of child labour". This proposed addition to the definition would also need to be considered in the context of Articles 4 and 6.

Norway. It is a great improvement that the importance of education is now addressed in the text. However, "work that deprives children of access to basic education" should be one of the worst forms of child labour. Also, it would be a great achievement if the text contained a direct reference to the participation of children in armed conflict as one of the worst forms of child labour.

Pakistan. Some of the worst forms of child labour are manifestations deeply rooted in poverty, parental unemployment and parental illiteracy. No society can eliminate them overnight or merely legislate them away, even with the best political will. Sometimes action to eradicate child labour can drive children into greater destitution. There is no doubt that providing children with education is an important factor in eliminating the worst forms of child labour. However, while providing universal education is an obligation of every State in accordance with the Universal Declaration of Human Rights, as well as all signatories to the Convention on the Rights of the Child, it would be difficult to agree that any work which hinders the education of a child should be included in the definition of the worst forms of child labour.

Peru. Participation in armed conflict is one of the worst risks to which a minor can be exposed; in Peru only persons approaching the age of 18 are called up for military

service. Subparagraph (c): Agrees that it is more appropriate to use the term "illicit" than "illegal"; this would be in accordance with the United Nations treaties on drugs and the Convention on the Rights of the Child.

Portugal. Subparagraph (d): The enlistment of children in armed conflicts, as combatants, as child soldiers or in military activities, is fully covered by subparagraph (d). This solution is advantageous because it would also cover the use of children in activities of a non-military nature but which pose the same danger of physical confrontation and use of arms, for example in private security activities.

CIP. Subparagraph (d): The definition of the type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children, is a subject that Convention No. 138 refers to the national legislation of member States. It is therefore not necessary to make provision for it in the proposed Convention.

CGTP-IN. It is forms of "labour" that are being defined. Other forms of child exploitation, however disgusting and intolerable they might be (such as prostitution or the use of children in illicit activities such as drug trafficking), do not fall within this sphere, as they do not correspond to the concept of work. In spite of the condemnation of these forms of child exploitation in the proposed Convention and other international instruments, it does not seem appropriate to define them as "forms of labour". Subparagraph (d): On the basis of the principle that the exclusive aim of the proposed Convention is the immediate elimination of the worst forms of child labour, the definition of what constitutes these forms of labour should be as broad and precise as possible, leaving nothing to the discretion of the Members which ratify the Convention. Because it is a binding instrument, the proposed Convention should list these types of work, as defined in Paragraph 3 of the proposed Recommendation, and should stipulate their immediate prohibition and elimination in keeping with its objectives.

Senegal. As regards illicit activities, the wording of article 33 of the United Nations Convention on the Rights of the Child appropriately defines the expression. The definition of illicit activities will have to be in conformity with the wording of relevant United Nations drug treaties. Although the involvement of children in armed conflicts, as combatants or child soldiers, constitutes an example of forced or compulsory labour, it must be expressly classified as one of the worst forms of child labour. Subparagraph (d): Should read "safety and morals", instead of "or", to show it is cumulative.

South Africa. Subparagraph (a): Include a reference to children involved in military activity as one of the worst forms of child labour in the new Convention, even if other international documents deal with the issue. Supports the formulation that was suggested by the Government member of Italy during the first discussion: "all forms of activity which involve the use of violence, including all forms of military activity". This formulation could also include the use of children by gangs. Subparagraph (c): Forms of illegal activity, for example, selling stolen goods, should also be included in a definition of the worst forms of child labour. Would such types of illegal activity also be covered by the term "illicit"? Both "illegal" and "illicit" could be included.

BSA. Subparagraph (c): During the debate at the 1998 Session of the Conference it was indicated that the word "illegal" is problematic in countries where the production and trafficking of narcotic drugs and psychotropic substances are legal. If this means that universal ratification would be jeopardized, then the word "illicit" should be used. However, as far as the situation in South Africa is concerned, the interpretation of the

clause would not be affected by using "illicit" instead of "illegal". Subparagraph (d): It could be argued that this covers children in armed and military combat/service. Any explicit reference to armed and military combat/service could jeopardize universal ratification of the proposed Convention and more could be achieved by relying on subparagraph (d), together with domestic legislation in the various countries.

Spain. This Article includes purely illegal or criminal activities among the worst forms of child "labour". To call selling drugs "labour" is contrary to logic and to the law. Moreover, including purely criminal matters in an ILO Convention seems inappropriate, as this is not the best forum for this kind of discussion. A clear distinction should be drawn in two major paragraphs between what is really considered hazardous child labour, adapting it to Convention No. 138 to ensure strict consistency, and criminal and illicit activities for commercial purposes, which would come under, and are already incorporated in, national criminal legislation. Subparagraph (a): The sale and trafficking of children should not be considered as child labour but as activities using children for commercial purposes. Subparagraph (b): Similarly, these types of activities should be distinguished from labour. Remove the reference to illegal activities and draft a new separate subparagraph (c). New subparagraph (c): "the use, procuring or offering of a child for illicit activities in general, and in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties". It is better to refer to "illicit" than "illegal" as the term "illicit activities" could refer to kinds of activities that are contrary to the law or morals, other than the production and trafficking of drugs. Special attention should be given to the possibility of explicitly referring to involvement of children in armed conflicts as combatants, as soldiers or in military activities. Subparagraph (d) is somewhat unclear, since it does not include the exceptions laid down in Convention No. 138 (paragraph 3 of Article 3), which allow persons under 18 years of age to work in hazardous activities, in particular with apprenticeships in mind.

CEOE. The issue of child soldiers was deferred to the second discussion in 1999, since it was not clear whether this could be considered as "labour" and hence be the subject of an ILO Convention. The Committee wondered whether it should be the subject of another kind of treaty or convention. It also runs counter to the practice in some industrialized countries that allows volunteer service from the age of 16. Subparagraph (c): Supports the Office's proposal as it is clearer.

Sri Lanka. The involvement of child combatants in armed conflicts, as soldiers or as military activists, constitutes one of the major forms of child abuse. This is a phenomenon prevalent in most of the countries where armed conflicts exist. There are instances where children even as young as 12 are conscripted. They are conscripted by force and, when caught while escaping, are severely punished. Children are engaged in activities that endanger their lives and the trauma and deleterious effects they undergo are enormous. Given the magnitude of the problem, and the potential threats it poses in jeopardizing the life, health, safety and morals of the child, it is proposed to mention this issue explicitly. The National Child Protection Authority Act of 1998 explicitly identifies this as a form of "child abuse".

Sweden. Subparagraph (c): Supports the use of "illicit" instead of "illegal". Insert a new subparagraph before subparagraph (d) that reads: "the use of children, forced or otherwise, recruited into armed forces for whatever purpose". Subparagraph (d): Add: "or to interfere with the child's education, as determined in Article 4(1)" at the end.

Switzerland. The situation of children in armed conflicts should be considered as one of the worst forms of child labour and be explicitly mentioned in this Article and not in Article 4, which deals with national legislation. Swiss NGOs also support such a reference. The right to education must absolutely be mentioned in the proposed new Convention. Whether such a reference should be made in Article 3 or 7, or in a specific provision of the proposed Convention, will be debated during the second discussion and a decision will be taken, hopefully by consensus. Subparagraph (c): Agrees with the Office's proposal to use the word "illicit" instead of "illegal", and to simplify the "in particular" phrase.

CSC/CNG. Favours mentioning the use of children in military activities. Because such a reference should be as broad as possible, it is proposed to refer to "the use of children in military activities". Subparagraph (c): Agrees with the Office's proposals to use the word "illicit" instead of "illegal", and to simplify the subparagraph. Subparagraph (d): Access to education should be mentioned. This reference should not be an obstacle to ratification as it does not imply that member States have an obligation to "guarantee" such access.

FSE/VSA. Subparagraph (c): Supports the Office's suggestion to refer to "illicit" instead of "illegal" activities. The suggested formulation of the phrase beginning "in particular" is also clear. Subparagraph (d): The situation of children in armed conflicts clearly comes under (d). However, it is both right and important to cite clearly the deployment of children in armed conflicts in a separate subparagraph and not to leave it to individual member States to define this circumstance themselves.

Syrian Arab Republic. Subparagraph (d): Shorten, while retaining its objectives and not leaving any scope for questioning the existence of the danger, as follows: "any type of work or activity that may jeopardize the health, safety or morals of children".

Ministry of Industry. During the first discussion in 1998, the Conference Committee decided to postpone discussion of children in armed conflict to the second discussion in 1999. A variety of opinions were expressed, the majority of which viewed the Committee as competent to deal with the issue. While war and conflict cannot be considered as employment, the social partners should determine their position on the matter and reaffirm the need to protect children during armed conflicts, and the need for those children to at least be able to defend themselves, should their mental, psychological, physical or moral well-being be endangered. Subparagraph (c): There is no reason to include these activities because as long as they are illegal, they are prohibited *ab initio*. The subparagraph should stress national legislation in member States to strengthen deterrent measures.

Tunisia. Favours mentioning the participation of children in armed conflicts, as combatants, as child soldiers or in military activities. Such a reference should be located between subparagraphs (c) and (d). Subparagraph (c): Agrees with the Office's proposed amendment.

Turkey. Employing children in armed conflicts, or in any kind of military activities as combatants, as well as recruiting and training them for these purposes, should be inserted as one of "the worst forms of child labour".

DÝSK. See comment under *General observations*.

Uganda. Children in armed conflict are a very vulnerable category of children and one of the most complex to handle. Interventions for their specific needs do not only

include basic education, withdrawal and their reintegration into society, but should also involve conflict resolution and making peace by all nations. The reference in the Preamble to the kind of comprehensive action envisaged to address the worst forms of child labour does not make any reference to conflict resolution or making peace. This special problem remains complex and requires deeper debate. Subparagraph (c): Supports the Office's proposal to use "illicit" instead of "illegal", since it harmonizes the English and French texts and is more consistent with the wording of United Nations treaties.

United Kingdom. The first two paragraphs of the Office's commentary in Report IV(1) end by suggesting "illicit" rather than "illegal". This, together with the simplified text proposed, would be acceptable. It is consistent with the United Nations Convention on the Rights of the Child and it is understood that it includes things which are unlawful as well as those which are morally wrong. It is considered that the original version of the report was illogical as, by introducing in subparagraph (c) the idea of procuring a child for illegal activities, it could appear to suggest that slavery, forced labour and child prostitution in subparagraphs (a) and (b) might be legal. The proposed amendment avoids this. The application of the Convention should not cover military service by persons under the age of 18, particularly as negotiations are currently in progress for an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. The Office commented that military combat is captured by subparagraph (d), which refers to work jeopardizing health and safety. If the ILO Convention does address the issue of military service it should do so explicitly, in keeping with the terms and focus of the Convention on the worst situations. The Government believes that the worst situations would involve young children who are forcibly recruited and involved in combat.

United States. Opposes the application of the proposed Convention to military service by persons under the age of 18, given current negotiations for an optional protocol to the United Nations Convention on the Rights of the Child on involvement of children in armed conflicts. Such efforts need not, and should not, be duplicated. If, however, the proposed Convention were to address the issue of military service, it should do so explicitly, in a provision that, in keeping with the proposed Convention's subject, focuses on the worst situations. Those situations involve young children who are forcibly recruited and involved in combat. Subparagraphs (a) and (b): Accepts these subparagraphs as presently drafted. Subparagraph (c): To afford as broad an interpretation as possible of this provision, the following text is suggested: "the use, procuring or offering of a child for illegal activities, as defined in the relevant treaties, including the production and trafficking of narcotic drugs and psychotropic substances;". Paragraph 11(c) of the proposed Recommendation should be revised accordingly. Regarding the use of the term "illegal" or "illicit", either term is acceptable. The simplified reference to drugs is also acceptable, provided that the relevant treaties now footnoted remain footnoted in Report IV(2A). Subparagraph (d): As currently formulated, this is open to the criticism that it is insufficiently focused on the truly worst forms of child labour. By tracking broadly-sweeping language in Convention No. 138, this subparagraph could (but need not) be read to present the same sort of obstacles to ratification that have prevented many member States from ratifying Convention No. 138. This problem is evident from Members' comments and from the discussions in the Committee on Child Labour in 1998. In this respect,

subparagraph (d) is distinguishable from subparagraphs (a) to (c), which contain suggested prohibitions that are clearly defined and that address readily identifiable types of exploitation. This subparagraph can, and should, be interpreted as addressing in a focused way forms of child labour that are of the same severity as those covered by subparagraphs (a) to (c). Within the context of the proposed Convention, it is understood that the proper focus of subparagraph (d) is work that poses an imminent danger to the health, safety, or morals of children. Like the work referred to elsewhere in Article 3, such work necessarily exploits children and exposes them to harm. Regarding access to basic education, it would be appropriate for the proposed Convention, in a focused way, to address the relationship between child labour and access to education. Subparagraph (d) should be modified to address the harm to younger children caused by forms of work that necessarily deny them access to basic education (appropriately defined) that would otherwise be available to them, taking into account the compulsory education requirements of the competent authorities of the member States. The undefined word "activity" should be deleted as it unnecessarily broadens the scope of the proposed Convention beyond the regulation of children's work. There is no clear justification in either the preparatory documents or the record of the discussions in the Committee on Child Labour for including this alternative phrasing in this provision. In contrast, the term "work" can be understood to include employment situations covered by national labour laws and other child-protection statutes, and can be readily catalogued for enforcement.

Venezuela. Subparagraph (b): Opposes the reference to prostitution, the production of pornography and pornographic performances as forms of work because this degrades the very concept of labour and the use of children for such activities is a crime against childhood and a violation of the human rights of children that merits universal condemnation and repudiation. Considering prostitution as a form of labour legitimizes an activity that is supposed to be eliminated, and fundamentally contradicts the very spirit of the proposed Convention. As subparagraph (d) refers to any activity "which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the ... morals of children", it is possible to work towards the eradication of these activities without these crimes needing to be defined as a form of labour, even if they are described as one of the "worst". The same applies to the participation of children in armed conflicts or as combatants.

FEDECAMARAS. Wholeheartedly supports the elimination of the intolerable forms of child labour listed in Article 3(a), (b) and (c) of the proposed Convention.

Zimbabwe. If the proposed Convention is to focus on the worst forms of child labour, the issue of child soldiers in armed conflicts or engaging in military activities should be explicitly mentioned under this Article, rather than leaving it to be dealt with under Article 4.

Holy See. Subparagraph (c): Considers it preferable to use the word "illicit" in both the English and French texts. This will also underline the relations between the proposed Convention and the fundamental principles contained in major international instruments relevant to human rights and labour laws, including the orientations expressed in the documents mentioned in the Preamble. Considers it opportune and necessary to include in the text an explicit reference to the participation of children in armed conflicts as one of the worst forms of child labour. This plague has been condemned by His Holiness John Paul II in his Message for Peace of 1996.

United Nations Committee on the Rights of the Child. The Committee reiterates its concern that work interfering with the child's education has not been included among the worst form of child labour. The Committee recalls the provision of article 32.1 of the Convention on the Rights of the Child in which "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education ...". The Committee also believes that subparagraph (d) should refer not only to the "health, safety or morals of children" but also to the "physical, mental, spiritual, moral or social development" of the child as spelled out in article 32.1 of the Convention on the Rights of the Child. Additionally, prostitution of children and their trafficking are contemporary forms of slavery which should not be considered as "work" under Article 3 of the proposed text but should be dealt with separately and adequately by the proposed Convention. The Committee also suggests that the proposed Convention also explicitly comprise in the expression "the worst forms of child labour" the use of child soldiers. This should also adequately be reflected in the proposed Recommendation.

Office commentary

The definition of the "worst forms of child labour" is fundamental to understanding the scope of the new instruments and raises several important issues for the second discussion at the Conference. These issues include the question whether there should be explicit coverage of children in armed conflict, the inclusion of denial of access to education in the definition, either as a separate provision or as a criterion in subparagraph (d), and the scope and appropriate precision of subparagraph (d). The Office has made minimal changes to this Article, given the differences of opinion on the key issues, which are thus for the Conference to decide.

Issue of child soldiers

In 1998 the Conference Committee extensively discussed the issue of explicitly mentioning children involved in armed conflicts, as combatants, as child soldiers or in military activities, as constituting one of the worst forms of child labour. Because of the wide range of opinions, the Committee decided to defer further consideration of the subject until the second discussion. In Report IV(1) the Office stated that it understood that under the proposed Convention as drafted, the participation of children in military services, armed forces or in armed conflicts would be contrary to the Convention if the determination is made under Article 4 that the work or activity in which they are engaged is likely to jeopardize their health, safety or morals. It may be assumed that participation in armed conflict would necessarily jeopardize their health, safety or morals. Participation in military activities might also be covered by other provisions of Article 3, for example, if it is forced or compulsory labour. The Office invited comments on the issue, including on whether an explicit reference should be made to the subject as constituting one of the worst forms of child labour.

A wide majority of comments favour an explicit reference in a separate subparagraph so as not to leave it to national determination. Others prefer leaving it to the determination to be made by national authorities under Article 4 according to the criteria in subparagraph (d). A few either abstain or say it is appropriate to discuss the issue, but do not take a position. Some comments recall the ongoing negotiations in the United Nations on a draft optional Protocol to the Convention on the Rights of the

Child on involvement of children in armed conflict and prefer that the issue be dealt with there.[7] A few governments which object to the inclusion of military service in the new Convention argue that if the subject were to be included, it should be explicitly mentioned in a provision that remains within the focus of the new Convention – the worst situations – and should refer to the situation of young children who are forcibly recruited and involved in combat. Others argue for inclusion of the use of children who are recruited, whether forcibly or not, into the armed forces for whatever purpose. Another comment suggests a broader reference to work that involves the use of violence and all forms of military activity, including military training, while another proposes prohibiting separately the participation of children in armed conflict as combatants (whether formally as members of armies or militias or on a more ad hoc basis) and in non-combat military activities which are likely to jeopardize their health, safety or morals.

Because the Conference Committee in 1998 decided that the issue should be taken up again in the second discussion, the subject is for the Conference to further debate and decide.

Subparagraph (a)

Confirmation is given as requested by the Government of Canada that "sale and trafficking" is not meant to cover issues outside the worst forms of child labour, such as adoptions.

Subparagraph (b)

Some comments suggest that the provision should be stronger or more explicit concerning the exploitation of children by means of new forms of technology, such as the Internet. The use of the Internet to spread child pornography, promote sex tourism and otherwise feed networks of paedophiles compounds the victimization of the children involved and creates greater demand for such victimization. To attack the abuses on the Internet, it is necessary to identify and reach the initial abusers and the victims and potential victims so that programmes of prevention can be instituted, as well as programmes to remove children from such abusive situations and rehabilitate them. This is the emphasis of the proposed standards. Offering or procuring a child can also occur over the Internet and would be covered by the provision. The medium of dissemination and consumption of the material produced using children has not been directly addressed, and is thus left to the national lawmaker. The existence of the material on the Internet would however be proof of violation of the prohibition against using the child to produce it.

Several other provisions of the proposed instruments are also relevant here. Under the proposed Convention, Members are to identify and reach out to children at special risk and take account of the special situation of girls. Programmes of action to eliminate the worst forms of child labour, according to the proposed Recommendation, should give special attention to younger children and those in hidden work situations. All of these are relevant to reaching and protecting the children who have been further

[7] The United Nations working group on a draft optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts met in its fifth session in Geneva for two days (11-12 January 1999). It deferred discussion so that further consultations could take place. It expressed the aim of finalizing the Protocol at its next meeting in the year 2000.

victimized through the use of the Internet. Another significant provision of the proposed Convention and Recommendation calls on ratifying States to assist each other in giving effect to the Convention, for example through international cooperation and judicial and technical assistance, and the Recommendation contains further provisions particularly relevant to the international dimension of the problem, including sex tourism, where perpetrators often use the Internet: cooperation in international efforts to exchange information on offences involving international networks, detection and prosecution of those exploiting children in prostitution and pornography, and registering perpetrators. The provision calling on member States to prosecute their own citizens for such crimes even if committed in another country is also relevant.

The Conference can consider the desirability of making a more explicit reference in the Recommendation.[8]

A few comments reiterate objections to including crimes related to the exploitation of children and would restrict the new Convention to the hazardous work provisions of subparagraph (d).

Subparagraph (c)

Subparagraph (c) was the result of an amendment in the Committee which moved the reference to illegal activities from clause (b) in the Proposed Conclusions into a new separate clause. At the same time, the specific example of using, procuring or offering a child for the production and trafficking of drugs was added. After considerable discussion in the Committee, a definition of drugs to which the provision applies was based on the wording of article 33 of the United Nations Convention on the Rights of the Child, that is "narcotic drugs and psychotropic substances as defined in the relevant international treaties". Some members questioned whether there was an obligation on States to make the production and trafficking of such drugs illegal, while other members of the Committee maintained that the illegal or illicit nature was understood for two reasons. First, the phrase was an example of illegal activities, and second, trafficking implied illegality. Nevertheless, it appeared that an activity of trafficking that had not actually been prohibited by the national law of a ratifying country might, especially in criminal proceedings, be considered to fall outside the scope of subparagraph (c). On the other hand, a theatrical production for children that involved a breach of copyright, for example, might be considered an "illegal" activity. For these reasons, the Office proposed that reference be made to "illicit" (which has a more moral connotation) rather than to "illegal" activities. This would, in addition, align the English and French texts. It is also consistent with the wording of United Nations drug treaties[9] and the Convention on the Rights of the Child, which refers to the prevention of the "use of children in the illicit production and trafficking" of the mentioned drugs. The Office also suggested simplifying the "in particular" phrase to read as follows: "in particular for the illicit production and trafficking of drugs as defined in the relevant international treaties". While

[8] Care must be taken with regard to any reference in the proposed Convention as too much detail could limit the scope of the Convention if it does not anticipate as yet unknown future means other than the Internet.

[9] The Office views the relevant treaties as the Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; Protocol amending the Single Convention on Narcotic Drugs, 1972; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

there is some difference of opinion on the above analysis, there is wide support for the changes, and they have therefore been introduced in the text.

Subparagraph (d)

Most of the comments on Article 3 relate to subparagraph (d). Some are concerned that it is not sufficiently focused on the truly worst forms of child labour and thus also have misgivings about the broad scope of the Convention. Others, primarily workers' organizations and some governments, believe that the subparagraph is not sufficiently detailed and that there is too much flexibility at national level. Questions are also raised about the similarity between this provision (and Article 4) and Article 3 of Convention No. 138 and the implication for the scope of the proposed Convention.

Some of the respondents argue for a common definition at the international level of what would be covered by subparagraph (d) as hazardous work and a worst form of child labour, even though some flexibility would be left to national determination to add to what is indicated. Some governments and a number of workers' organizations again propose that the list in Paragraph 3 of the proposed Recommendation be incorporated into the Convention, either in Article 3(d) or in Article 4, to specify more clearly what should, as a minimum, be considered as hazardous work. One government suggests that other possible examples be listed to indicate the type of work which is meant, such as textiles, mining, ceramic and glass industries, match and fireworks industries and deep-sea fishing. Another government argues that the proper focus of subparagraph (d) should be work which poses an imminent danger to the health, safety, or morals of children, thus addressing forms of child labour that are of the same severity as the readily identifiable types of exploitation in subparagraphs (a) to (c) – i.e. work which necessarily exploits children and exposes them to harm.

There is some sentiment, then, that the proposed Convention should make it clearer that it is about "particularly hazardous" work which requires immediate elimination, and which is so likely to jeopardize the health, safety or morals of children that they should not be used or engage in it under any circumstances. Other comments, however, point out that the designation of work "which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children" captures the intent and is appropriately consistent with the wording of Convention No. 138, and that Paragraph 3 of the Recommendation (or its inclusion in the Convention) provides the proper guidance as to what is meant. Others emphasize that the flexibility allowed for national determination under Article 4 is appropriate and sufficient.

Convention No. 138 and the proposed Convention

The proposed Convention seeks to achieve the prohibition and elimination of the worst forms of child labour. It focuses on a part of child labour covered primarily by Convention No. 138, but also by Convention No. 29 and the Convention on the Rights of the Child. It selects "the worst forms" as a priority for immediate and specific kinds of action. As presently drafted, it is more specific and goes further than Convention No. 138 in some respects.

First, it is more specific on the kinds of child labour prohibited for those under age 18 in subparagraphs (a) to (c) and explicitly includes forms that have been addressed in the ILO and other international instruments of general applicability on forced labour, slavery and practices similar to slavery.

Definition and scope of coverage compared to Convention No. 138

Proposed Convention	Convention No. 138
Applies to all persons under the age of 18 – no person under the age of 18 is to be in a worst form of child labour.	Higher minimum age of 18 is set for hazardous work – "any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons".
Worst forms of child labour:	
(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;	Not specified. Covered by Convention No. 29.
(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;	Not specified. Treated as a form of forced labour by the Committee of Experts under Convention No. 29.
(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;	Not specified.
(d) work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.	"Any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons".
Work in (d) above to be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned.	The type of employment or work to be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned.
No similar provision. Not considered a worst form of child labour.	Certain employment or work can be authorized as from the age of 16 years, instead of 18 years, providing there are consultations and there is the required protection and training.
Applies to the worst forms of child labour in all sectors.	Developing countries may initially limit the scope of application except for designated sectors.
No provision automatically excluding training. May be considered as a circumstance in which the work is carried out.	Does not apply to work done by children and young persons in schools or training institutions for general, vocational or technical education, or to persons aged at least 14 when training is in an undertaking if certain conditions are met.
Artistic performances are not specified, but such work is covered if it is determined to be a worst form of child labour.	Allows exception to the basic minimum age for participation in artistic performances based on individual permits.

Second, the proposed Convention contains no exceptions for certain branches of economic activity as provided in Article 5 of Convention No. 138. Thus, the work referred to in subparagraph (d) of the proposed Convention must be prohibited and eliminated in all branches of activity. Under Article 5 of Convention No. 138, a Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, initially limit the scope of application of the Convention. Even hazardous work requiring a minimum age of 18 could be excluded in branches of activity not mandatorily covered by the Convention, such as family and small-scale agricultural holdings producing for local consumption and not regularly employing hired workers. However, the prohibition of hazardous work applies in the sectors that must be covered as a minimum: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes. Recommendation No. 146 goes further by saying that, as a minimum, even in branches of activity excluded under Article 5, appropriate minimum age provisions should be made applicable to types of work presenting hazards for young persons.

This, then, is an area where the new Convention goes beyond Convention No. 138 and follows Recommendation No. 146. This is consistent with the purpose of the Convention, which is to cover kinds of work that are intolerable in all countries, irrespective of their level of development.[10]

Third, the proposed Convention does not contain an automatic exclusion for training situations similar to Article 6 of Convention No. 138,[11] the implication being that if apprenticeships or other training situations are subjecting children to a worst form of child labour, they should be prohibited from working in them. It is also possible that protected training situations could be a circumstance in which the work is carried out and thus could fall outside the prohibition of subparagraph (d). The interpretation given by the representative of the Secretary-General during the Conference concerning the ability of countries to interpret the phrase "by its nature or the circumstances in which it is carried out" to give them flexibility similar to that afforded by Convention No. 138 was that when viewing Articles 3 and 4 together, a circumstance in which the work was carried out could be, for example, whether adequate training or full protection had been provided.

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[10] No country has yet invoked the flexibility provision of Article 5, and thus the trend is for ratifying countries to accept the broad scope of Convention No. 138.

[11] Work done in schools for general, vocational or technical education or in other training institutions and work in undertakings performed by those at least 14 years old is not covered by the Convention if:

- it is performed according to conditions prescribed by the competent authority;
- there has been consultation with the organizations of employers and workers concerned;
- it is part of authorized training.

To come under this exclusion, the education or training must be an integral part of:

- an education or training course for which a school or training institution is primarily responsible;
- a programme of training (apprenticeship) which is carried out mainly or entirely in an enterprise and which has been approved by the competent authority;
- a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Fourth, Article 8 of Convention No. 138 provides that exceptions from the basic minimum ages (it does not refer to the higher minimum age of 18) can be allowed for participation in artistic performances after consultation with organizations of employers and workers concerned and by permits granted in individual cases which must limit the number of hours of work and specify the conditions of work, the implication being that the permits will protect the child from hazardous work. The proposed Convention makes no special exceptions, and so artistic performances which, because of their nature or the circumstances in which they are carried out, fall within the worst forms of child labour would thus be prohibited.

Convention No. 138 sets the minimum age at 18 for work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons. The types of work are to be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The proposed Convention has been drafted consistently with that so as not to set a lower standard when the subject is the worst forms of child labour and to give some flexibility for national determinations to take account of circumstances in different countries that can make work more or less hazardous.

Paragraph 3 of Article 3 of Convention No. 138 provides that notwithstanding the higher minimum age of 18 for work which is likely to jeopardize the health, safety or morals of young persons, work from the age of 16 could be authorized "on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity".

Options suggested by the comments include "de-linking" the language of subparagraph (d) from that of Convention No. 138 by different wording; giving specific examples in the proposed Convention (in Article 3(d) or Article 4) of the types of work it is intended to cover, for instance those listed in Paragraph 3 of the proposed Recommendation; providing for a similar authorization to that in paragraph 3 of Article 3 of Convention No. 138; or including flexibility provisions similar to those in other Articles of Convention No. 138.

There are also other suggestions in the comments to broaden the scope of the Convention by adding further criteria, such as access to education, and to extend the meaning of "health" to include psychological health and social development. The issue of education is discussed below. The Office views "health" broadly as incorporating physical and mental health, which is consistent with the dictionary definition as the state of being well in body and mind and referring to a person's mental and physical condition. The Conference Committee was also referred by a delegate to the definition of health in the Constitution of the World Health Organization, which incorporates physical, mental and social well-being.

Deletion of reference to "activity"

One change has been introduced in subparagraph (d) of the proposed Article 3. It now refers to "work" rather than to "work or activity", based on a suggestion in the comments that the reference to "activity" is unclear and could cause confusion. The reference to "activity" had been inserted to meet the objections of some countries to referring to some of the activities in subparagraphs (a) to (c) as work. "Activity" was nonetheless meant to be read within the context of the "worst forms of child labour". The drafting history of Article 3 of Convention No. 138 also offers insight into the use

of "activity" in this context. The language in a draft of Convention No. 138 during the preparatory phase was initially "employment or work in any occupation", but "occupation" was considered unsuitable since it is not necessarily an entire occupation which is hazardous but possibly just certain activities within it. For greater precision, the term "type of employment or work" was used to indicate that it was activities to which the Article refers, and not necessarily entire occupations, although governments are free to set higher standards for occupations if they wish. This sense is intended to be retained even with the deletion of "or activity", it being understood that the type of work determined under Article 4 to come within the definition of subparagraph (d) could be activities or occupations.

The Government of Canada sought confirmation that, in view of Paragraph 11 of the proposed Recommendation, there is no requirement for the activities in this subparagraph to be criminalized as long as there are other appropriate penalties, such as administrative, civil and labour penalties. First, according to Article 7 of the proposed Convention, it is up to Members to determine which sanctions are appropriate, in any given case, and whether they should be penal or other sanctions. Paragraph 11 goes further by recommending that at least the activities in subparagraphs (a) to (c) should be criminal offences. Paragraph 12 suggests that penalties, but not necessarily criminal penalties, also be applied concerning violations related to subparagraph (d). It would be up to the Member to determine which kind of violations warranted which kind of penalties, which could include administrative, civil and labour penalties. A distinction is drawn between subparagraph (d) and subparagraphs (a) to (c), and thus what is determined to fall under subparagraph (d) by the member State under Article 4 is covered by Paragraph 12 of the proposed Recommendation.

Issue of education in the definition

Some governments and numerous workers' organizations suggest that work which prevents a child from taking advantage of available education, or a variant of the formulation, should be included in the definition of the worst forms of child labour. They argue that the intention is not for the proposed Convention to require governments to ensure universal basic education, but rather that work which by its nature systematically bars children's access to basic education (some say "primary" or "compulsory" education) should come under the definition. Another proposal is to modify subparagraph (d) to address the harm to younger children caused by forms of work that necessarily deny them access to basic education (appropriately defined) that would otherwise be available to them, taking into account the compulsory education requirements of the competent authorities of the member States.

The issue of what constitutes basic education is also raised in relation to its inclusion in the Preamble and in Article 7. Convention No. 138 does not refer to basic education but to the age of completion of compulsory schooling and attendance at school. When the United Nations Educational, Scientific and Cultural Organization (UNESCO) refers to basic education, it means the basic learning needs outlined in the World Declaration on Education for All: "Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in

development, to improve the quality of their lives, to make informed decisions, and to continue learning" (Article 1, paragraph 1). "Basic education is more than an end in itself. It is the foundation for lifelong learning and human development on which countries may build, systematically, further levels and types of education and training" (Article 1, paragraph 4).

Based on this, UNESCO considers that basic education is the education level needed in a country for citizens to become fully functional and varies from country to country. It is primary education in some countries, and primary and secondary education in others. UNESCO's programme and budget for 1996-97 states that, in line with the expanded vision articulated by the World Declaration on Education for All, basic education encompasses early childhood and primary education, as well as literacy and life skills training for youth and adults, and can include both formal and non-formal delivery systems.

Only one workers' organization gives examples of what would make work, by its nature, deprive a child of access to educational facilities that would otherwise be available to him or her: the number of hours worked, the time of work, or its location. One government suggests that the determination of work which interferes with a child's education should be as provided under Article 4(1).

Those who oppose the inclusion of such a reference argue that lack of access to education is not comparable to the crude abuses targeted by the proposed Convention and that such an inclusion merely reiterates the principles of Convention No. 138 and its prohibition of work which prejudices attendance at school or the capacity of children to benefit from the instruction received.

The Office had not included this in the original draft in order to keep the focus on worst abuses requiring immediate attention and to avoid duplicating the principles of Convention No. 138 that already linked child labour to the denial of education.

Finally, it should be noted that the subparagraphs of Article 3 are not mutually exclusive and any particular type of work could fall within one or more of the categories.

Article 4

1. National laws or regulations or the competent authority shall, after consultation with the organizations of employers and workers concerned, determine the types of work or activity referred to under Article 3(d) and identify their existence, taking into account relevant international standards.

2. The list of the types of work or activity determined under paragraph 1 of this Article shall be periodically examined and revised as necessary by the competent authority after consulting the organizations of employers and workers concerned.

Observations on Article 4

Argentina. Paragraph 1: Replace "after consultation" with "in collaboration".

Australia. Accepts the alternative formulation provided by the Office as it provides more clearly for the three separate processes. "Identify the existence of ..." appears to be a clear statement of the obligation involved, i.e. the identification of the actual existence of types of work at the national level, on the basis of tripartite consul-

tations, to enable action to be taken. Including paragraph 1, which provides for the determination of the types of work or activity referred to under Article 3(d), makes the intent of the phrase clear.

Belgium. Agrees with the Office's proposal for an alternative formulation of Article 4, but suggests the following amendments: Paragraph 1: Insert the words "and, where appropriate, other groups concerned," after "employers and workers concerned". Paragraph 2: Insert the words "and, where appropriate, other groups concerned," after "employers and workers concerned". Agrees with the formulation proposed by the Office concerning the words "identify the existence of". Paragraph 3: Add the words "and, where appropriate, other groups concerned." at the end of the paragraph.

Benin. The words "identify their existence" express the certainty that the activity exists but do not imply measures to be taken for the elimination of the worst forms of child labour.

Botswana. The Office's suggested formulation is clearer. The identification of the existence of the types of work that fall under Article 3(d) is a prerequisite for firm action, and therefore must remain an obligation for member States.

Brazil. The Brazilian Ministry of Labour has exclusive competence to identify activities that involve a risk for the health and safety of children, and national legislation already contains a list of this kind, which is currently being revised by the Ministry of Labour. The proposed Convention determines that this type of list should be drawn up following consultations with employers' and workers' organizations, a practice that the Ministry of Labour prefers to allow only for new revisions of the existing list.

Bulgaria. The types of work or activity referred to under Article 3(d) should be appropriately included in national legislation to better orient the measures specified by the proposed Convention. Listing them in national legal provisions identifies them in such a way that the measures required by the proposed Convention can be appropriately oriented. The periodic revision of the list of types of work or activity by the competent bodies, after consultations with employers' and workers' organizations, would contribute to the full implementation of the Article. It is also appropriate to consult relevant NGOs and other institutions working on children's problems.

Canada. Would like further clarification on this Article as it was understood that, after consultation, the competent authority determines the worst forms of child labour. In this case the Government would continue to support the Article as it gives the competent authority the flexibility to determine in each member State what constitutes the worst forms of child labour. There is a question, however, whether a complaint can be made to the ILO based on the omission of one type of work or activity from the list of the worst forms of child labour. Is there any jurisprudence based on Convention No. 138 that would be useful in this matter? Until further clarification, the Government would agree, in principle, to the Office's proposal to reformulate the Article, with two changes. Paragraph 1 should be drafted as: "The types of work or activity referred to under Article 3(d) shall be determined by the competent authority, through national laws or regulations, after consultation with the organizations of employers and workers concerned, taking into account relevant international standards." Paragraph 3

should have the words "by the competent authority" inserted after "as necessary", as it should be made clearer that it is the competent authority that determines and revises, through national laws or regulations, the types of work or activities referred to under subparagraph (d) of Article 3.

CEC. Paragraph 2: Agrees with the insertion of "list of the". Agrees with the Office's proposal to redraft the Article and place responsibility for identifying the existence of the types of work or activity referred to under Article 3(d) only on the competent authority, as this is not a legislative authority. Further, determining the actual existence of various types of the worst forms of child labour, as defined in the proposed Convention and local laws, requires careful review of current conditions in member States. Article 4 refers only to the identification of the existence of the worst forms of child labour set out in Article 3(d). This presumably reflects the belief that the types of activities which are likely to jeopardize health, safety or morals are more difficult to identify than those set out in Article 3(a), (b) and (c). However, as has been pointed out by the Office, before remedial or corrective measures can be taken to eliminate any of the defined categories of the worst forms of child labour, their existence in the particular member State must be confirmed. With this in mind, the identification process should be applicable to the proscribed activities under all subparagraphs of Article 3. The phrase "identify the existence" is a clear statement of the initial obligation to be undertaken. It is to be followed with appropriate corrective action programmes. Thus Article 6 sets out the obligation of Members to design and implement programmes of action to eliminate as a priority the worst forms of child labour. These worst forms, which will be the subject of the programmes, will be those set out in the proposed Convention and, where required (as for activities under Article 3(d)) determined as such by national laws and then identified as being in existence in the member State.

CLC. Stresses that involving NGOs in the consultation process is particularly important. However, reference is made to this in the proposed Recommendation and that reference is sufficient. This applies also to Article 6(2).

Chile. Agrees that including the phrase "identify their existence" facilitates comprehension and reflects a clearer mandate than "determining the types of work or activity". Furthermore, the formulation of the Article is somewhat ambiguous. It is not clear whether it is obligatory for the competent authorities to make effective the mandate to identify the existence and determine the types of work in which children are involved, or whether to do this they must have the consent of the employers' and workers' organizations. If the second option is correct, the most harmful work performed by girls and boys could easily be hidden from the scrutiny of the authorities. Despite the ambiguous formulation and the unresolved point just mentioned (which should be improved upon), when it comes to choosing between the three alternative formulations of Article 4, we opt for the second as it is the clearest one: "The competent authority, after consulting the organizations of employers and workers concerned, shall identify the existence of the types of work or activity so determined".

Confederation of Production and Trade (CPC). It is excessive to empower the "competent authority" to determine that certain types of work or activity should be considered "the worst forms of child labour". This power should be the prerogative of the legislative authority, given the greater guarantees of rational and fair deliberations and decision-making by that authority.

CONUPIA. Agrees with the Office's proposed reformulation; however, move "the competent authority" to before "national laws or regulations" and insert "taking into account the criteria set out in Article 3(d)" after "activity so determined".

Czech Republic. See comments under the proposed Recommendation, Paragraph 3(e).

Ecuador. Agrees.

Egypt. Approves the draft text.
Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees with the proposed text.

Estonia. For clarity it would be reasonable to formulate the Article more precisely and to determine the kinds of activities referred to under Article 3(d). Such language is not common in ILO instruments. A more flexible text would be easier for member States and could promote ratification. Given the importance of the proposed Convention and its global extension, the more general version of the Article is preferred. However, paragraph 1 from the suggested alternative text could be submitted to the Conference for discussion.

Estonian Association of Trade Unions. Prefers using the phrase "the most representative organizations of employers and workers".

Ethiopia. The Article should remain as originally proposed, since the determination and identification of work or activities usually occur together, and there is no significant difference in meaning.

Finland. Agrees with the Office's proposal to have three paragraphs rather than two, as it clarifies the text.

TT and PT. Paragraph 1: Although the idea behind this paragraph is in essence correct, there should be no references to international standards, as these could be based on unratified Conventions. Paragraph 2: The need to examine and revise the definitions of dangerous forms of work to suit changing circumstances is, in principle, correct where it is necessary on account of technical or other developments. There are, however, no grounds for setting fixed periods for such revisions.

France. CFDT. Agrees with the alternative formulation proposed by the Office.

Germany. Supports the alternative wording proposed by the Office, which is clearer and linguistically less clumsy. Alternative paragraph 3: Supports the change made by the Office to add the words "the list of".

BDA. Delete "and identify their existence". The issue here is the definition of the types of child labour mentioned in Article 3(d); Article 4 therefore complements Article 3. On the other hand, identifying the existence of such forms of child labour has nothing to do with the definition. If the proposed Convention must refer to identifying the existence of such forms of child labour, which should be regarded more as a measure for implementing the proposed Convention, Article 7 would logically be the appropriate place to do so.

DGB. During the 1998 Session of the Conference, the proposal to include other concerned groups was rejected. The DGB stressed that the involvement of NGOs was, however, especially important, and reference was made to this in the proposed Recommendation, which is sufficient. The International Steering Committee of the Global

March Against Child Labour, in keeping with the need to uphold the ILO's tripartite spirit, has suggested that consultations should in particular take into account the views of the children and their families who are directly affected by the worst forms of child labour. Such a formulation would be consistent with the requirements laid down by the United Nations Convention on the Rights of the Child. This also applies to Article 6, paragraph 2.

Greece. Supports the alternative formulation.

National Confederation of Greek Trade. Agrees to the alternative formulation.

General Confederation of Small and Medium-sized Entrepreneurs, Craftsmen and Tradesmen of Greece. Accepts the formulation suggested by the Office.

India. See comments on Article 3(d).

Ireland. ICTU. See comments under Article 3 regarding hazardous work and education. The proposal from some governments to include "other concerned groups" in the consultation process required by the Convention was opposed by the Workers, Employers and some governments. The Workers' group stressed that involving NGOs was nevertheless particularly important and reference is made to this in the proposed Recommendation. The reference in the proposed Recommendation is sufficient and a reference in the proposed Convention could seriously compromise the tripartite nature of the ILO and the obligations on governments which ratify ILO standards to initiate and maintain tripartite processes. The International Steering Committee of the Global March Against Child Labour has issued a statement which reiterates the need to preserve the ILO's tripartite nature. It therefore proposes that, rather than add "other concerned groups" to the tripartite process, the tripartite consultations should "take into account the views of children and their families directly affected by the worst forms of child labour". ICTU supports this formulation. Such a formulation would also be consistent with the requirements of the United Nations Convention on the Rights of the Child.

Italy. Agrees with the alternative formulation proposed by the Office. Recognizes the importance of consulting NGOs and other groups concerned and suggests inserting in the two paragraphs after the word "concerned" the words "and other groups concerned, as appropriate".

CONFCOMMERCIO. Agrees with the formulation proposed by the Office.

CGIL, CISL and UIL. Agree with the formulation proposed by the Office, as it better clarifies the procedures.

Japan. The second paragraph of the alternative formulation requires consultation with the organizations of employers and workers concerned. However, it is not necessary for the competent authority to consult with the organizations of employers and workers twice, as called for in paragraphs 1 and 2. Thus it is appropriate to keep the currently proposed draft unchanged.

Kenya. COTU. See comments under Article 3. Agrees with the Office's alternative formulation.

Republic of Korea. Paragraph 1: Agrees with the Office that in the provision "National laws or regulations or the competent authority shall ... determine the types of work or activity referred to under Article 3(d) and identify their existence ...", the functions of national laws and regulations as well as the competent authority are vague,

and it is difficult for national laws or regulations to "identify their existence". Thus it should be revised so that there is a clear distinction between the role of national laws or regulations and that of the competent authority.

Lebanon. Add an annex to the proposed Convention that determines in a clear and detailed manner the types of work or activity referred to under Article 3(d) and mentioned briefly in Paragraph 3 of the proposed Recommendation, to avoid any relative explanation and to set up consolidated standards for guidance.

Madagascar. Agrees with the alternative formulation proposed by the Office.

Mali. The alternative formulation proposed by the Office should be taken into consideration and discussed by the Conference. The words "identify the existence" do not seem to be appropriate because the means for the identification or the support are not defined.

Mexico. Insert a heading "Application" before this provision. This should become a Paragraph of the Recommendation, as Mexico favours a Recommendation only, and be divided into subparagraphs, with Paragraph 3 of the proposed Recommendation as a subparagraph before current subparagraph 2.

Netherlands. Agrees with the proposal made by the Office to add an extra paragraph. See comments under the Preamble and Article 3.

New Zealand. Supports the alternative formulation proposed by the Office for three distinct paragraphs; however, there are some concerns in relation to the wording: "shall identify the existence of the types of work or activity so determined". In the proposed alternative paragraph 2 it is not clear whether means of identification will be left to the competent authority to determine in accordance with national policy/practice, or whether there would be some standard or criteria applied when member States are assessed for compliance with the Convention. Some flexibility would be required to accommodate variations in national policy and practice. It is also unclear whether such identification is intended to be an enforcement mechanism or a means of elaborating the types of activity to be covered by the prohibition. As in Paragraph 2 of the proposed Recommendation, "other concerned groups" should also be included in paragraph 2 of this Article so that it reads "... shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers and, as appropriate, other concerned groups, taking into account ...". This would ensure that there is additional opportunity for children themselves to be consulted if they are not represented by any of the tripartite partners, and would be consistent with article 12 of the United Nations Convention on the Rights of the Child, which states that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child ...". Furthermore, the parliamentary select committee process in New Zealand provides an opportunity for groups specified in the proposal, as well as wider groups, to have input into the process of determining legislation.

NZEF. Supports the Office's proposed reformulation of Article 4 into three distinct paragraphs. Alternative paragraphs 1 and 2: Shares the Government's concern regarding the wording of the second paragraph, and has a similar concern with the first paragraph, in that it is unclear to what extent the determination of work or activity likely to jeopardize the health, safety or morals of children (paragraph 1), and the

existence of such work or activity (paragraph 2), are matters solely for States. The NZEF agrees that if there are to be ILO-determined criteria, some flexibility will be required to accommodate variations in national policy and practice. The NZEF would also agree that consultations should be held not only with organizations of employers and workers but "as appropriate, (with) other concerned groups".

NZCTU. See comments under Article 3. Paragraph 2: The NZCTU does not support the inclusion of "other concerned groups" because the reference could compromise the tripartite nature of the ILO and the obligations on governments that ratify ILO standards to initiate and maintain tripartite processes. A more appropriate wording is that consultations should "take into account the views of children and their families directly affected by the worst forms of child labour". This formulation is also consistent with the Convention on the Rights of the Child.

Portugal. Paragraph 1: The phrase "and identify their existence" clearly expresses the idea that the obligation is to determine the types of work referred to in subparagraph (d) of Article 3. Paragraph 2: Agrees with inserting "list of the", bearing in mind the need to review the list periodically and, if necessary, revise it.

CIP. The definition of the type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children, is a subject that Convention No. 138 refers to the national legislation of the member States. It is therefore not necessary to make provision for it in the proposed Convention.

Romania. Merge paragraphs 1 and 2 to read as follows: "Taking into account relevant international standards, national legislation and practice, the competent authority, after consulting the organizations of employers and workers concerned, shall determine the types of work or activity referred to under Article 3(d)".

Senegal. It is not just a question of determining the types of work or activity that are likely to jeopardize the health, safety or morals of children, but of drawing up a list and, above all, updating it. In paragraph 1 "identify their existence" does not indicate that there is any obligation; it is possible to "identify" without actually doing anything about the situation.

South Africa. Understands that the purpose of this Article is for countries to establish which work or activity would constitute the worst forms of child labour in addition to those mentioned under Article 3(a) to (c). Such work would also be prohibited and targeted for immediate elimination. Although this is supported, the separation of the concepts "determine" and "identify" could create a "loophole" and raise a number of problems. It was suggested during the first discussion that the worst forms of child labour be determined through a process presumably taking into account Paragraph 3 of the proposed Recommendation and subject to the value judgements of the particular country and society. Subsequently, whether such work or activity "exists" would need to be established. If it does not exist, it would not need to be included in legislation, regulation or by the competent authority. However, a worst form of child labour might not exist this year but might appear next year. If it were not regulated, then the proposed Convention does not apply. In addition, the "worst forms of child labour" are often hidden and it is not easy to establish their existence. It would be better to assume that these forms of child labour exist and have the proposed Convention and national legislation apply to them when they are "exposed" or "discovered". Finally, in any

event, when a country is "determining" what constitutes the worst form of child labour the State is most likely going to focus on those that they are aware of or the worst forms of child labour that they feel most strongly about. It is therefore questioned whether this Article should include the provisions of Paragraph 3 of the proposed Recommendation, as proposed by the Worker members and debated in the first discussion. Although this form of cross-referencing between an ILO Convention and Recommendation is a common practice, it may not be appropriate in this instance. This issue should be revisited. If this does not occur, then it is preferable to use the word "determine" and leave out the phrase "identify their existence".

BSA. The alternative wording proposed by the Office gives greater clarity, but the current wording could also be supported.

Spain. Supports the Office's proposed alternative formulation as it is more appropriate and clearer. Alternative paragraph 1: Add "to this end, Members shall draw up a list of such types of work or activity" at the end. Alternative paragraph 2: The phrase "identify the existence of" is more than an obligation, it is a necessary measure to meet the fundamental obligation established in paragraph 1. If the existence of a type of work that jeopardizes the health, safety or morals of children in a given country is not "identified", there is no point in including it in a list. "Identification" is necessary and instrumental in drawing up a list that will have a real impact.

CEOE. Prefers the Office's proposed text. Alternative paragraph 2: This could give rise to problems in the second discussion, since it was by no means made clear in the Committee that the organizations of employers and workers concerned should be involved in "identification" tasks.

Sudan. Paragraph 2: For more precision and to avoid consulting numerous organizations, include "most representative" before "organizations".

Sweden. Supports the Office's proposal to have three paragraphs. Alternative paragraph 3: After "under paragraph 1" insert "and the list of those identified according to paragraph 2".

Switzerland. Agrees with the Office's proposal. Stresses in particular the proposed reference to "shall identify the existence".

CSC/CNG. Agrees with the Office's proposal. Stresses in particular the proposed reference to "shall identify the existence".

FSE/VSA. The alternative formulation suggested by the Office is a clear catalogue of the States' functions and therefore is preferred over the current formulation.

Syrian Arab Republic. Replace "the organizations of employers and workers concerned" with "employers' and workers' organizations" as this is the accepted expression in both the ILO and the Arab Labour Organization (ALO).

Tunisia. Paragraph 1: Delete "and identify their existence" in the original text instead of creating another paragraph as proposed by the Office. Paragraph 2: Stresses the similarity between Article 3(d) and Article 3 of Convention No. 138. It needs to be clarified whether this will be the same obligation as that under Convention No. 138 or whether there will be two different obligations for member States which have already ratified Convention No. 138 and intend to ratify the new Convention.

Uganda. Paragraph 1: Requiring the identification of the worst forms of child labour is clear. This will require not only specific studies targeting such children and

their communities, but also specific inspection mechanisms and special programmes to address their needs.

United Kingdom. The Office's proposed alternative text is an improvement on the original text discussed at the 86th Session of the Conference. It is suggested that the wording of Paragraph 2 should read: " ... and identify where the types of work or activity so determined exist".

United States. Paragraph 1: According to the explanation provided by the ILO secretariat during the June 1998 discussions in the Committee on Child Labour (*Provisional Record* No. 19, paragraph 149), under this Article, Members are afforded appropriate flexibility in determining, within their national contexts, the types of worst forms of work. This flexibility is imperative. It is understood that the term "competent authority" may include state governments – as an accommodation for Members having state/federal legal systems such as those that exist in the United States. For clarity of interpretation, this understanding of the definition of "competent authority" should be set forth in Report IV(2A). It should also be understood that the phrase "taking into account relevant international instruments" does not commit ratifying Members to embrace the terms of Convention No. 138. Any instruments which are intended to be included within this phrase should be footnoted so that Members may comment on their inclusion, as in the Office's comments on Article 3, at note 3, page 3 of Report IV(1). The Government reiterates the objection to the inclusion of the term "activity" as unnecessarily extending the proposed Convention beyond regulation of children's work, but otherwise fully endorses the Office's proposal to separate out the language relating to identifying the existence of the worst forms of child labour referred to in Article 3(d).

Venezuela. FEDECAMARAS. Paragraph 1: Prefers that "identify their existence" be removed from the paragraph.

Zimbabwe. Both paragraph 2 of the alternative formulation presented by the Office and paragraph 1 of the proposed text refer to identifying the existence of types of work or activity referred to under Article 3(d). The assumption is that identification takes precedence over determination of such types of work or activity and that without identification processes the competent authorities, in consultation with the organizations of employers and workers, cannot determine the types of work or activity referred to under Article 3(d).

Holy See. The Office's suggested formulation is considered useful as it improves the text. The obligation for competent national authorities to elaborate the list of the worst forms of child labour is important. In parallel, it would also be desirable to specify their role and commitment in the periodic examination and revision of the text as necessary. The identification of the concrete existence of the types of work or activity so determined is particularly important.

Office commentary

Alternative formulation of the Article

The Office had been invited to review the drafting of this Article as the result of an amendment in the Committee which added "and identify their existence". The original text had provided the process for determining which work or activity was likely to

jeopardize the health, safety or morals of children referred to under Article 3(d). An amendment was adopted by the Committee to provide that not only did the types of work or activity need to be determined, but the actual existence of such work or activity needed to be identified in the country so that action could be taken. The Committee thus kept the determination of the types of work or activity and added that their existence had to be identified. However, this resulted in the references to the functions of national laws and regulations and competent authorities being somewhat mixed and unclear. It was assumed that only competent authorities, after the required consultations, would identify the existence of the work and activities determined, since this would not be a legislative act.

To reflect the wishes of the Committee more clearly, the Office invited Members to comment on an alternative formulation for Article 4. Based on the support in the replies, the Office has inserted the alternative text with a slight change in paragraph 2, picking up a suggestion from a government to further clarify that what has to be identified is where the work so determined exists. The Article now has three paragraphs to cover three separate processes: first, to determine the types of work which are likely to jeopardize the health, safety or morals of children, and to list them in national legal provisions; second, to see where these are actually carried out by children so that the measures required by the Convention can be appropriately targeted; and third, to re-examine the determination periodically.

Paragraph 1

A provision for consultation with "other concerned groups" was rejected in the first discussion, although some governments announced that they intended to revisit the issue in the second discussion and raise it in their comments. In addition, there is some support, including among some workers' organizations, for "taking into account the views of the children and their families directly affected by the worst forms of child labour".

In response to the Government of the United States, it is understood that the term "competent authority" may include state governments – accommodating Members having state/federal legal systems. The competent authority is that authority, or those authorities, with legal competence for carrying out the prescribed obligations.

The Government of Canada asks for further clarification that it is the competent authority, after the required consultation, that determines the worst forms of child labour under subparagraph (d) of Article 3. This is correct. It also asks whether a complaint can be made to the ILO based on the omission of one type of work from the list of the worst forms of child labour and whether there is any jurisprudence based on Convention No. 138 that would be useful in this matter. Under Convention No. 138, Article 3 leaves to the individual countries both the content and the method of determining the types of work or employment. However, whatever the method chosen, it is necessary that a determination be made, and the Committee of Experts on the Application of Conventions and Recommendations has requested information from ratifying countries on the types of employment or work designated as hazardous. Countries which have only a general provision in law prohibiting hazardous work of those under a prescribed age, and no regulations specifying what is prohibited, in spite of provisions granting the power to make such regulations to the relevant Ministry, are asked by the Committee to make the regulations. If there is no

determination of dangerous work, or if the list only contains very few items, the Committee of Experts calls on the government to take action in consultation with the employers' and workers' organizations. However, as there is no obligatory minimum list under the Convention, there are no grounds for the Committee of Experts to request the inclusion of any particular types of work in the list. Article 3(d) of the proposed Convention is similarly broadly worded and does not contain any references to a specific type of work or activity. In that sense it is a discretionary provision, leaving it to the competent authority to determine the type of work, after consultation with the organizations of employers and workers concerned, subject however to the overriding obligation on Members to implement in good faith the Conventions that they have ratified, reflected in article 26 of the Vienna Convention on the Law of Treaties.

Some replies question the phrase "taking into account relevant international standards". This refers to those standards that can aid in the determination of what is likely to jeopardize the health, safety or morals of children. The reference does not create an obligation on a member State which has not ratified other standards to comply with them. Recommendation No. 146, which provides further guidance on the criteria which should be applied to the determination under the similar provision in Convention No. 138, recommends that full account be taken of standards such as those concerning dangerous substances, agents or processes (including ionizing radiations), the lifting of heavy weights and underground work. There are other instruments concerning safety and health at work which could also be helpful. If examples, such as those in Paragraph 3 of the proposed Recommendation, are specified in the Convention, it might not be necessary to keep the phrase "taking into account relevant international standards".

Some who support mentioning education in the definition suggest, as an alternative to insertion in Article 3, that the determination in Article 4 give attention to work which, by its nature, systematically denies children access to basic education or take into account the right to basic education.

Paragraph 2

There remains some disagreement over the concept of identifying the existence of the types of work determined to fall under Article 3(d). Some argue that it is a necessary and self-evident step to be taken both in the determination process and in national action. It is also suggested that paragraph 2 is inappropriate in this Article, which has to do with definitional issues and not practical measures.

It is noted that the identification required in paragraph 2 applies only to the worst forms of child labour referred to in subparagraph (d) of Article 3. However, only a few comments are made on this point, and these are about evenly divided on whether this should be extended to subparagraphs (a) to (c) of Article 3.

Article 5

Each Member shall establish or designate appropriate mechanisms to monitor the application of provisions for the prohibition and immediate elimination of the worst forms of child labour.

Observations on Article 5

Australia. The Government has no objections to the drafting of this Article and would support the phrase "... the provisions giving effect to the Convention".

Botswana. Supports the changes proposed by the Office.

Brazil. CNC. This Article imposes on governments the obligation to establish national mechanisms and this could reduce the maximum number of ratifications.

Bulgaria. The Government supports the revised text of the Article suggested by the Office.

Canada. Agrees with the Office's proposal.
CEC. Agrees with the Office's proposed amendments.

Chile. CONUPIA. Agrees with the Office's proposed reformulation. Should refer to "eradication", rather than "elimination". The types of mechanisms which might be established to monitor the application of provisions giving effect to the proposed Convention should explicitly refer to "appropriate mechanisms", such as the use of national censuses and the maintaining of centralized systems of information on such procedures, possibly at the ILO (without this implying any direct supervision of such programmes, their implementation or the results achieved). This would avoid any ambiguity associated with the establishment of bureaucratic mechanisms that may be ill-suited to the national programmes of action called for in Article 6.

Denmark. Supports the proposal to read as follows: "to monitor the application of the provisions giving effect to the Convention".

Ecuador. Agrees.

Egypt. Approves the draft text.
Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees with the proposed text.

Finland. Agrees with the Office's proposal as it is clearer and more appropriate wording.
TT and PT. This provision would be more appropriate in the proposed Recommendation.

Germany. Supports the Office's proposal as it is to the point. Supports replacing "aimed at" with "for". The labour protection authorities in Germany have the duty to control the application of the protective measures for children and young persons and punish violations through fines and sanctions.
BDA. Insert this Article after Article 8, as it concerns the monitoring of implementation, and the more logical sequence is that it come after actual implementation measures.

Greece. Agrees to the change suggested by the Office.

Haiti. Recommends keeping the original formulation.

Italy. CGIL, CISL and UIL. The existing text makes provision for a monitoring mechanism not only concerning the implementation of the Convention but also of the Recommendation.

Japan. Supports the Office's proposal to replace "provisions for the prohibition and immediate elimination of the worst forms of child labour" with "the provisions giving effect to the Convention", if it does not change the effect of the Article.

Kenya. COTU. Agrees with the Office's revision, but insert ", after consulting the organizations of employers and workers," before "establish", so that the views of a broader cross-section of other concerned groups, such as the children themselves, their parents and NGOs, will be taken into account.

Republic of Korea. Agrees with the Office's suggestion because it would reduce redundancies and make the whole provision simpler.

Madagascar. Agrees with the proposed text.

Mexico. Keeping in mind that Mexico favours a Recommendation only, the provision should be the first subparagraph and read: "Each Member shall establish or designate appropriate national mechanisms to monitor the application of provisions and measures for the immediate prohibition and progressive elimination of the worst forms of child labour". Insert a second subparagraph: "Such national mechanisms should be established after consultation with the organizations of employers and workers concerned, as well as other concerned groups where appropriate".

Netherlands. Agrees with the proposal made by the Office to refer to "provisions giving effect to the Convention".

New Zealand. Supports the change made by the Office to replace "aimed at" with "for".

NZEF. Agrees that the word "for" should replace the words "aimed at".

NZCTU. See comments under Article 3.

Portugal. Agrees with the Office's proposal. The word "must" is more binding than "shall". The phrase "provisions which give effect to the Convention" seems more far-reaching than the phrase "provisions for the prohibition and immediate elimination of the worst forms of child labour".

Senegal. In the alternative formulation proposed by the Office, replace the word "designate" with "determine". It is more appropriate because the provision should indicate the means of combating child labour and not just designate the mechanism.

South Africa. Supports the alternative proposed by the Office.

BSA. Supports the alternative wording proposed by the Office; however, the current wording could also be accepted.

Spain. Agrees with the Office's proposal. The expression "the provisions giving effect to the Convention" is more appropriate, since it is simpler, implies all the obligations laid down in the instrument, and is less repetitive. Specific machinery for follow-up should be included in the proposed Convention, as is the case with other international instruments, such as the Convention on the Rights of the Child.

Switzerland. FSE/VSA. Supports the Office's suggestion.

Syrian Arab Republic. To provide more flexibility for ratification the term "immediate" should be removed before "elimination" and "immediately" should be placed in front of "establish".

Tunisia. Agrees with the Office's proposal. Suggests putting Article 5 after Article 6 or inserting its provisions into paragraph 1 of Article 7.

United Kingdom. Favours the Office's proposed revision as it is tidier, removes a reference to immediate elimination and is more logical.

United States. It is not entirely clear how the intended obligation in Article 5 is distinct from those in Article 7(1). On the face of it, it would seem that monitoring the application of provisions giving effect to the proposed Convention would be an integral part of ensuring effective implementation and enforcement of those provisions. If this is the case, then Article 5 is redundant and should be combined with Article 7(1) in the interest of keeping the proposed Convention both succinct and understandable. The Government prefers to use "provisions giving effect to the Convention", as proposed by the Office.

United Nations Committee on the Rights of the Child. This Article should contain an explicit reference to a multidisciplinary mechanism and could also call upon States Parties to compile detailed information and statistical data on the nature and extent of child labour, as spelled out in the proposed Recommendation in Paragraph 4(1).

Office commentary

This Article was initially in the Proposed Conclusions with a view to a Recommendation. It referred to "provisions for the prohibition and immediate elimination of the worst forms of child labour", rather than to the Convention, so that the Recommendation would not need to be read solely in relation to the Convention. If a country had not ratified the Convention, it could still have provisions for the prohibition and elimination of the worst forms of child labour. In the Convention, however, the Office suggested that it might be simpler to refer to "provisions giving effect to the Convention". As the comments show strong support for the change, it has been incorporated into the text. One additional change has been made: "application" has been changed to "implementation", which is more consistent with the purpose of implementation of provisions at the national level.

There is general agreement that this provision on monitoring mechanisms should stay in the Convention, although there is some question about the kind of machinery it would be and what the difference is between what is provided in Article 7 on enforcement and in this Article. "Monitoring" has the sense of overseeing implementation, and the monitoring body could involve representation from civil society. It may assess and evaluate national programmes, for example, and make proposals for change. One model suggested by some countries is the committees set up under the United Nations Convention on the Rights of the Child or national committees or advisory bodies on child labour. The United Nations Committee on the Rights of the Child suggests that the reference be to a multidisciplinary mechanism. If an existing mechanism is designated, it should have a clearly identified mandate concerning the worst forms of child labour.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations.

Observations on Article 6

Belgium. Paragraph 2: Insert the words "and, as appropriate, other groups concerned" at the end of the paragraph.

Bulgaria. Agrees.

Canada. Paragraph 1: Suggests that "as a priority" should be moved to after "implement" to ensure that the programmes of action are a priority.

CLC. See comment under Article 4.

Chile. CONUPIA. The term "as a priority" could be expanded and improved by establishing times and deadlines.

Ecuador. Agrees.

Egypt. Approves of the draft text. Paragraph 2: Include "and other concerned bodies" at the end of the sentence.

Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees with the proposed text.

Estonia. Paragraph 2: NGOs, especially those dealing with child protection, should be added to the text, as it is very important for NGOs to give their opinions and implement programmes of action.

Estonian Association of Trade Unions. Paragraph 2: Prefers using the phrase "the most representative organizations of employers and workers".

Finland. TT and PT. Paragraph 2: This is acceptable, but add "where they exist" at the end.

Germany. Experience with IPEC has demonstrated that in many countries where child labour is a problem, NGOs have played an outstanding role in the efforts made to combat child labour, both its causes and its consequences. Therefore, the role of NGOs should also be included in a provision of the proposed Convention. It is regretted that no agreement could be reached during the first discussion, but an agreement would be welcomed during the 1999 Session on the issue. Employers' and workers' organizations should avail themselves of the expertise and experience of such organizations when they prepare their consultations with governmental institutions when designing and implementing programmes of action.

BDA. Insert this provision after Article 8 as this constitutes a special means of implementation and should accordingly be addressed only after the basic implementation measures and before the monitoring of implementation. See comments under Article 5.

DGB. Paragraph 2: See comment under Article 4.

Ireland. ICTU. Paragraph 2: See comments under Article 4.

SIPTU. Paragraph 2: Add: "taking into account the views of children and their families directly affected by the worst forms of child labour" at the end of the paragraph, in accordance with the Convention on the Rights of the Child, which stipulates the right of the child to be heard in all matters affecting the child. This amendment would bring the proposed Convention into compliance with the terms of the Conven-

tion on the Rights of the Child while preserving the tripartite structure of the ILO. It would establish an appropriate basis to determine the most important element of the consultations proposed in Paragraph 2 of the Recommendation, which calls for consultation with, inter alia, "as appropriate, other concerned groups".

Japan. Although it is important to design national programmes of action in countries that have many cases of the worst forms of child labour and thus need programmes to eliminate them, such forms of child labour scarcely exist in some of the developed countries. Imposing an obligation to design domestic programmes of action, in addition to developing a system for the elimination of child labour, even in countries where the worst forms do not exist is likely to cause excessive administrative burdens. Therefore, this provision should be included in the Recommendation rather than the Convention. Otherwise, "as appropriate", for example, should be added so that this obligation is not imposed uniformly on all countries.

JTUC-RENGO. Supports the proposed text.

Kenya. COTU. Paragraph 1: Insert ", after consulting the organizations of employers and workers," before "design". In this way the views of a broader cross-section of other concerned groups such as the children themselves, their parents and NGOs will be taken into account.

Mexico. This becomes a Paragraph in Mexico's proposal for a Recommendation only.

Netherlands. Paragraph 2: See comments under the Preamble.

South Africa. Supports the proposed text.

Spain. The wording may lead to misunderstanding and therefore changes are proposed. Paragraph 1: Move "as a priority," to the beginning of the sentence. Paragraph 2: Replace "in" with "after" and replace "government" with "public".

Sudan. Paragraph 2: For more precision and to avoid consulting numerous organizations, include "the most representative" before "employers' and workers' organizations".

Switzerland. Paragraph 2: There should be a reference to other "concerned groups". Such a reference does not call into question the tripartite structure of the ILO.

UPS. The tripartite structure of the ILO should be emphasized without any ambiguity, thus there should not be a reference to other "concerned groups", which could prevent some member States from ratifying the proposed Convention. Such a reference is already made in both Paragraphs 2 and 7 of the proposed Recommendation.

Turkey. DÝSK. See comment under *General observations.*

United States. Supports this Article as presently drafted.

Office commentary

Comments similar to those on Article 4 suggest adding a reference to consultations with other concerned groups or the affected children and their parents in the design and implementation of programmes of action. No changes have been introduced, however, as this is an issue for the Conference to decide.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal and other sanctions, as appropriate.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent children from engaging in the worst forms of child labour;

(b) provide the necessary and appropriate direct assistance for their removal from work, rehabilitation and social reintegration through, inter alia, access to free basic education; and

(c) identify and reach out to children at special risk and take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Observations on Article 7

Argentina. Subparagraph (a) only speaks of measures to "prevent children from engaging in the worst forms of child labour", whilst subparagraph (b), which refers to work in general and not just to the worst forms, uses the much stronger word "removal". The subparagraphs should be amended so that subparagraph (a) refers to removal of children from the worst forms and subparagraph (b) provides for prevention. In addition, "of children who have not reached the minimum age for work" should be added after "social reintegration". The word "time-bound" should be included.

Australia. Paragraph 1: Supports deleting "which ratifies the Convention" after "Each Member", for the reasons outlined by the Office. Supports the alternative wording suggested by the Office: "including the provision and application of penal sanctions or, as appropriate, other sanctions", as it may make the meaning more transparent. In keeping with a flexible and principles-based approach to the Convention, Members should be able to determine the most appropriate penalties, as a requirement for criminal penalties may be an obstacle to ratification for some Members. Paragraph 2: The use of the term "time-bound" does not result in a contradiction with earlier provisions. Immediate action is required, not immediate elimination. The Preamble calls for immediate and comprehensive action. The provisions in paragraph 2 call for time-bound measures, which does not preclude immediate action. The use of "time-bound" provides more flexibility without imposing a general time frame on all member States. It provides the flexibility for each State to determine its own time frame according to national circumstances. The Government supports the use of "time-bound" in terms of the commitment to taking immediate action but subject to national circumstances in terms of determining the time frame. It needs to be clearly understood within the context of this Article that each Member determines its time frame for the measures. Paragraph 2(b): Supports including measures to redress the exploitation of children, developed within a child protection context, including the measures for rehabilitation and reintegration. Strongly supports inserting "such" before "work" to make it clear that it is not all work that is referred to here.

Belgium. Paragraph 1: Agrees with the formulation proposed by the Office. It will force member States to fulfil their obligations. Paragraph 2: Prefers "for their removal from the worst forms of child labour".

CNT. Paragraph 2(b): Welcomes the reference to access to free basic education.

Botswana. Paragraph 1: The words "as appropriate" at the end of the paragraph qualify "penal and other sanctions", and therefore the Office's formulation is clearer. Paragraph 2: As the term "time-bound" does not necessarily convey the immediacy of the required measures, it should be replaced by "urgent". Paragraph 2(b): Since the instruments are aimed at eliminating the worst forms of child labour, the phrase "removal from work" seems to mean removal from work that subjects children to the worst forms of child labour. However, for greater clarity, the phrase "removal from work" could be replaced by "removal from such work".

Brazil. Paragraph 1: It is important to define objectively the "other" sanctions to which reference is made. The absence of a definite indication in the text could give rise to undesirable interpretations. It would be preferable to replace the phrase "penal and other sanctions" by "penal, administrative and civil sanctions", as this conforms to national legislation. Paragraph 2: Experience in Brazil shows that the establishment of deadlines and goals for the elimination of the worst forms of child labour is unrealistic and at times counterproductive, given that it fails to consider the division of powers that exists in federal States, such as Brazil, or the complexities of the issue of child labour. A reference to the definition of general short-term, medium-term and long-term objectives could be accepted. Subparagraph (b) refers to the rehabilitation and social reintegration of children removed from work, initiatives for which provision is made in Brazilian legislation. The proposed Convention prevents children under 18 years of age from engaging in any professional activity, which would not be appropriate, as access to the Brazilian labour market is open to citizens who have completed the minimum legal age of 14 years (or 16 years, once welfare reform has been approved, which is currently before the National Congress), without prejudice to having completed compulsory schooling.

CNC. The reference to penal sanctions, instead of appropriate sanctions, and to free basic education, which presupposes the imposition of an obligation that is too much of a burden for some countries, could reduce the maximum number of ratifications.

Bulgaria. Paragraph 1: Agrees. Paragraph 2(b): Replace "removal from work" with "in order to remove from any type of work those who are under the minimum working age while undertaking measures for their rehabilitation and social reintegration".

Canada. Paragraph 1: As it is understood that criminalizing activities under Article 3(d) is not required, this should read "... including the provision and application of civil, administrative, penal or labour sanctions, as appropriate" to indicate a broader range of legal means that a country should adopt to eliminate the practices identified by the proposed Convention. This will ensure that countries can be held accountable for their efforts, or lack thereof, in implementing the proposed Convention and enforcing related national legislation. Paragraph 2: Needs clarification. It should be specified that education of children is being referred to, not awareness raising on the issue. The words "worst forms of" should be inserted before "child labour" in keeping with the focus of the proposed Convention. Supports the use of the term "time-bound" as it is understood that Members would immediately adopt measures to eliminate the worst forms of child labour and that these must be implemented within a specified period of time. Paragraph 2(b): The word "such" should be inserted before "work" and "and for their" after it, to indicate the proposed Convention's focus on the worst forms of child labour.

CEC. Paragraph 1: Agrees there is no need to use the qualifying term "which ratifies the Convention". Supports the use of "provisions giving effect to the Convention". Regarding the meaning of the expression "penal and other sanctions, as appropriate", during discussions there was support for the fact that certain types of transgressions were so egregious that penal sanctions would be appropriate. Less severe sanctions would be appropriate for less serious transgressions, and the Office's proposed rewording reflects this discussion. Paragraph 2: The use of the term "time-bound" is not a logical qualifier for the obligation of Members set out in Article 7(2)(a), which refers to measures to prevent children from engaging in the worst forms of child labour, as there is to be zero tolerance for these forms. The ambiguity of this language may have resulted from attempts to broaden the scope of applicability of the proposed Convention beyond the intent of most delegates and Members. By proceeding in this fashion there is a risk of merely duplicating Convention No. 138, ending up with another Convention that cannot be ratified and failing to achieve the goal of this particular exercise – the immediate elimination of the worst forms of child labour. It is, however, recognized that time will be required for the rehabilitation of affected children and the creation of the necessary infrastructure to address the needs of children removed from the worst forms of child labour (as well as of children who would in the future, without viable alternatives being made available, find themselves involved in the worst forms of child labour for financial and other reasons). Paragraph 2(b) should read "removal from such work", as not addressing this ambiguity could jeopardize broad ratification of the proposed Convention. To include access to free basic education in the definition of the worst forms of child labour broadens the scope of the proposed Convention beyond its intended goal of the removal of children from the worst forms of child labour. A number of developing countries have already expressed serious objections to the inclusion of this concept. If the goal of Members is indeed the adoption of a Convention that will truly be the first step in a longer process aimed at improving the plight of the world's children, the temptation to go beyond the current mandate must be resisted. This does not preclude Members from implementing programmes to improve education and training for children to prepare them for better jobs and ultimately better living standards. By keeping the proposed Convention focused on the worst forms of child labour, the chances of broad ratification and enforcement are increased.

CLC. The reference to "time-bound" measures does not result in a contradiction with the requirement for immediate action, as comprehensive action against the worst forms of child labour must take place immediately and, depending on the outcome of national tripartite consultations, such action may include time-bound measures on certain specific matters. This raises questions on the meaning of "time-bound" and it should be clarified that such measures should be completed within the shortest possible time frame. The term "time-bound" may need to be replaced or qualified to reflect this.

Chile. Paragraph 1: Agrees that the phrase "including the provision and application of penal sanctions or, as appropriate, other sanctions" better reflects the intention of the Article and is less likely to lead to misunderstandings than that contained in the original version. Paragraph 2: The expression "time-bound" does not clearly reflect the urgency with which the most harmful forms of child labour should be eliminated. Insert instead the term "urgent" as this would more appropriately reflect what the instruments are trying to achieve. Paragraph 2(b): The question is raised as to whether it is more correct to refer to removing children from work, with it being implied that this relates

to the most harmful forms listed in the previous subparagraph, or if it would be better to refer to removing children from all work. The first alternative would be more correct as at certain ages child work is legally permitted in certain circumstances, in contrast to the total prohibition of boys and girls participating in the most harmful forms of child labour. In addition, the paragraph should reassert the condition of the child as the active subject of the irrefutable right to education. Thus the formulation of this paragraph should include an explicit reference to this broader focus on the inalienable right to education, and not only refer to education as a form of rehabilitation and social reintegration intended to free children from work.

CONUPIA. Paragraph 1: Disagrees with the Office's proposed reformulation as the emphasis should be on activities which in themselves and by their dissuasive force will allow the eradication of child labour, without giving particular emphasis to penal sanctions which might be applied. Owing to the very limited effect, if any, of penal sanctions in the informal sector, in which the majority of the world's child workers are employed, criminalizing child labour might create greater problems of information and could result in greater obstacles to eradication. It is not clear who might be made liable to penal sanctions, and therefore indications should be given of persons who may be held responsible. Paragraph 2: It is sufficiently clear that "time-bound" relates to the priority determined in Article 1. Delete "taking into account the importance of education in eliminating child labour", as it appears to be out of context, since it refers to mechanisms for preventing or eradicating child labour rather than to the application of the proposed Convention. If it is necessary to refer to measures or strategies for eradicating child labour, this should be set out in a separate subparagraph. Specific mention should be made to families and retraining as part of the strategy for eradicating child labour. Paragraph 2(b): Children themselves suggest this should be subdivided into two independent paragraphs, one relating to preventive measures, the other to measures for empowering or helping child workers.

Croatia. Working Group of Trade Union Confederations. Paragraph 2(b): Insert "immediate" after "their" so that the provision suggests taking urgent action and does not allow for stalling.

Czech Republic. Paragraph 2(c): Not only girls, but also boys are exposed to these types of risks. Add a new subparagraph as follows: "prohibit advertisements, supply and mediation of this type of work".

Denmark. Paragraph 1: Agrees with the change to read "Each Member" and to add "the provisions giving effect to". The provision should not imply a duty to punish a violation of Article 3, and thus the last part of the provision should read: "including, where appropriate, the provision and application of penal and other sanctions".

Ecuador. Agrees.

Egypt. Approves of the text of the Article, with the following changes: Paragraph 2: Add "and the reduction of poverty" after the phrase "taking into account the importance of education". Add two subparagraphs that read: "to control poverty" and "to decrease the number of children dropping out of school, especially during the basic stages, considering that dropping out of school is a main factor causing child labour". Paragraph 2 (b): Add "as far as possible" after "provide the necessary and appropriate direct assistance". Paragraph 2(c): Add "and their parents" so that the subparagraph reads as follows: "identify and reach out to children at special risk and their parents".

Egyptian Trade Union Federation. Paragraph 1: Agrees. Paragraph 2: Add "poverty alleviation and fighting unemployment and" after "taking into account the importance of".

El Salvador. Agrees with the proposed text.

Estonia. Paragraph 2: The word "time-bound" should be included. Paragraph 2(b): Supports the phrase "removal from work", because it provides better protection and rehabilitation for children.

Estonian Association of Trade Unions. Paragraph 2: The word "time-bound" could be replaced by a more common ILO term. Paragraph 2(b): Considering the ideology and goals of the proposed Convention, the phrase "removal from such work" would be more suitable.

Ethiopia. Paragraph 1: Supports the Office's proposed amendment. Paragraph 2: Some method should be devised to indicate that the use of the term "time-bound" refers to the measures that can be applied for the immediate elimination of the worst forms of child labour, as provided in Article 1 of the proposed Convention.

Finland. Paragraph 1: Replace "effective implementation and enforcement" with "implementation and effective enforcement". Supports keeping the phrase "including the provision and application of penal and other sanctions, as appropriate" as it is. Paragraph 2: The expression "time-bound measures" does not conflict with the concept of "immediate elimination" because while immediately eliminating the worst forms of child labour, member States will also engage in effective and time-bound measures in the areas indicated in Paragraph 2(b). Under Article 1, Members ratifying the Convention shall take measures to secure the prohibition and immediate elimination of the worst forms of child labour. Under Article 7, paragraph 2, Members shall engage in time-bound measures, for instance to prevent children from being subjected in the future to the worst forms of child labour. This latter provision does not conflict with the aims of the Convention. Paragraph 2(b): Supports the phrase "removal from work". Paragraph 2 (c): The reference to the special situation of girls is very general and its effectiveness will depend on how the Article is interpreted. It should cover situations where girls are kept at home to do housework and prevented from receiving an education. However, it is difficult to decide where to draw the line in such circumstances. The lack of education of girls and their parents and their lack of access to paid employment often result in girls working as prostitutes or in the sex industry. The importance of education should be stressed as it is fundamental in the fight against child labour. Adults, including parents, employers and officials, and exploited children themselves need education.

SY. Paragraph 2(b): Changes should be made so that the concept "removal from work" clearly refers only to situations which should be condemned under the proposed Convention.

TT and PT. Paragraph 1: The ILO's role regarding the use of child labour is to set goals. Implementation of the responsibilities derived from these goals is, in contrast, a matter for the national authorities of each country, and one in which it is not the primary task of the ILO to interfere. The TT and PT support the formulation "including the provision and application of penal and other sanctions, as appropriate" and consider that Article 7 would be better placed in the proposed Recommendation. The application of penal sanctions could be a useful means to prevent the worst forms of

abuse of children. However, the system of sanctions applied in each country must be in harmony with the country's general system of sanctions.

France. CFDT. Paragraph 1: The text should include various forms of sanctions. The alternative formulation proposed by the Office is endorsed. Paragraph 2: The use of the word "time-bound" does not conflict with the need for immediate action. While it is true that comprehensive action against the worst forms of child labour must be undertaken immediately, it can, after national tripartite consultations, include time-bound measures in certain specific areas. In this instance, it is clear that time-bound would not mean a long period.

Germany. Paragraph 1: Agrees with the drafting changes made by the Office. The Office's comment on the "provision and application of penal and other sanctions" is to the point. To express the intended meaning accurately, the following is proposed: "including the provision and application of sanctions and, where appropriate, penal sanctions". It should be clarified that penal sanctions should not be directed at the children concerned. Paragraph 2: Keep the term "time-bound" because the measures referred to in paragraph 2 (b) and (c) cannot always be taken immediately. However, the term "time-bound" could be somewhat mitigated by inserting the words "as appropriate" before it (measures are either taken immediately or within a fixed time limit). Paragraph 2 (b): At first glance, it would appear logical to restrict the removal of children from work to the forms of child labour that are the subject of the proposed Convention. Otherwise children employed in the worst forms of child labour would be at an advantage compared to children who are "only" employed in other activities, i.e. those prohibited under Convention No. 138 or national provisions, but practised nonetheless.

BDA. Paragraph 1: In laying down implementation measures, more flexibility should be allowed. The provision should read: "including penal or other appropriate measures". Paragraph 2: Delete "taking into account the importance of education in eliminating child labour". It means nothing in this context and only creates confusion regarding the scope of the obligation. Delete the words "and time-bound". This wording, which would permit longer periods for implementation, is at variance with the main objective of the proposed Convention, which is the immediate elimination of the worst forms of child labour. Paragraph 2(b): Delete the reference to "access to free basic education" since it is not absolutely necessary for achieving the immediate elimination of the worst forms of child labour. Furthermore, implementing this measure might strain the resources of many countries and could be an impediment to ratification, and therefore counterproductive in terms of implementation. Add a new subparagraph mentioning the immediate elimination of work hazards as referred to in Article 3(d) as an implementation measure. In many cases, a total ban on work for children might not be economically acceptable for the families concerned. In such cases, however, it would appear to be both feasible and urgently necessary at least to undertake measures aimed at eliminating hazards (protective measures, reducing the workload to a level that is no longer "hazardous"). The objective of the proposed Convention does not require the prohibition of all forms of child labour, such as those that are non-hazardous.

DGB. Paragraph 2: The term "time-bound" does not give rise to a contradiction, since comprehensive measures against the worst forms of child labour must be introduced immediately and, depending on the outcome of national consultations, such measures in certain areas may also include time-bound measures. However, it must

be made clear that these measures are to be carried out as soon as possible, and the Committee will perhaps have to define the term more precisely or replace it to make this point clear. Paragraph 2(b): Opposes the proposal to refer to "such" work, since on the basis of this formulation children could be shifted back and forth on the labour market or even within the same workplace or enterprise. While the minimum age set by the proposed Convention will probably be 18 years, the instrument will complement Convention No. 138, which allows non-hazardous employment for persons under 18 years of age. The original text referred to their removal from work, rehabilitation and social reintegration. In the view of the Workers' group, children engaged in the worst forms of child labour would be removed from work and assigned to appropriate programmes, which could include vocational training. Full-time employment of children aged between 15 (14) and 18 is permitted under Convention No. 138, provided that the work does not come under the definitions of the worst forms of child labour and is not contrary to the relevant provisions of Convention No. 138 (in particular as regards hazardous work).

Greece. Paragraph 1: Agrees to the minor drafting change made by the Office and supports the reformulation of the phrase proposed by the Office. Paragraph 2(b): Subparagraph (b) calls for the removal of children from work to prevent them from "engaging in the worst forms of child labour". Children should not be prevented from engaging in all types of work if their work does not impede their rehabilitation and access to basic education.

National Confederation of Greek Trade. Paragraph 1: Agrees with the interpretation of the Office and suggests the following wording: "including the provision and application of penal sanctions or, as appropriate, other sanctions".

General Confederation of Small and Medium-sized Entrepreneurs, Craftsmen and Tradesmen of Greece. Paragraph 1: Considers that penal sanctions are indispensable and proposes the following formulation: "including the provision and application of penal sanctions or, as appropriate, other sanctions in addition". Paragraph 2: Proposes inserting the words "of immediate priority" after "time-bound measures".

Ireland. ICTU. Paragraph 2: There is no contradiction between time-bound programmes and the requirement for immediate action, as comprehensive action against the worst forms of child labour must take place immediately and, depending on the outcome of national tripartite consultations, such action may include time bound measures on certain specific matters. Such programmes should be completed within the shortest possible time frame and it may be necessary to qualify or replace the term "time-bound" to reflect this. Paragraph 2(b): ICTU strongly opposes the suggestion to refer to "such" work, as this could allow children to be moved around the labour market, or even the same workplace or enterprise. While the age benchmark is expected to be set at 18 for this Convention, the instrument will be complementary to Convention No. 138, which does permit non-hazardous employment of persons under 18. Further, the current wording refers to "their removal from work, rehabilitation and social reintegration ...". This would mean that children in the worst forms of child labour would be removed from work, and placed in appropriate programmes which could include vocational training. For children between 15 (14) and 18, full-time work is allowed under Convention No. 138 as long as this work does not fall within the definition of the worst forms of child labour and does not contravene the relevant provisions of Convention No. 138 (in particular concerning hazardous work).

Italy. Paragraph 1: Agrees with the formulation proposed by the Office. Paragraph 2: The expression "time-bound" should be clearly formulated and it should not allow for delays in national action. Therefore it could be specified that member States should take "effective, urgent and time-bound measures in as short a time as possible". Paragraph 2(b): Prefers that the text remain as it is.

CGIL, CISL and UIL. Paragraph 1: Concerning penal sanctions, the text approved by the Committee in 1998 should be kept. Paragraph 2: The use of the word "time-bound" does not mean that measures to guarantee the immediate elimination of child labour should not be adopted. On the contrary, this specification is not in contradiction with the provisions of the text since the immediate action can also include measures to be taken within specific deadlines and thus in the shortest possible time. Paragraph 2(b): Keep the current text, rather than referring to removal from "such" work, meaning the worst forms of child labour. The text makes provision for removal from work, rehabilitation and social reintegration, or the use of specific programmes including the use of vocational training. To change the reference to removal from work to "such" work could be contrary to the provisions of Convention No. 138 and, among other things, could lead to children under 15 years of age being used in other work.

Japan. Paragraph 1: Supports keeping "including the provision and application of penal and other sanctions, as appropriate" as it gives flexibility to the provision. It should mean that measures would not necessarily include sanctions, but that penal and other sanctions would be included among the measures, if appropriate. The alternative draft suggested by the Office is not appropriate, because it requires the provision and application of penal sanctions as the primary measure and reduces the extent of discretion each country has. Paragraph 2: The meaning of providing "time-bound" measures is not clear. Necessary measures should be taken when they are required and do not need to be "time-bound". Therefore, the phrase "effective and time-bound" should be replaced by the phrase "necessary and effective". In addition, what measures are required under what circumstances should be determined by each country. Paragraph 2(b): Supports "removal from such work" because "removal from work" can be interpreted to refer to removal from all types of work, which goes beyond the purview of the purpose of the Convention. The words "basic education" have never been used in an ILO Convention or Recommendation, so it is not clear what measures this paragraph requires. Another word with a clear meaning could be used or the meaning of "basic education" explained.

NIKKEIREN. Paragraph 2(b): The phrase "through, inter alia, access to free basic education" could be an impediment to universal ratification and therefore this should be replaced by "through measures to address their educational needs" or "through access to free basic education and/or work-cum-training".

JTUC-RENGO. Paragraph 2: Supports the use of the term "time-bound". However, this paragraph should also imply that such measures should be completed within the shortest possible time frame. Paragraph 2(b): This subparagraph should read: "for their removal from the worst forms of child labour".

Jordan. Federation of Jordanian Chambers of Commerce. Solidarity between the social partners to act at all levels is necessary to provide compulsory education and re-education for children.

Kenya. COTU. Paragraph 1: The word "penal" refers to criminalizing non-compliance with the provisions of Article 3(a) to (c) of the proposed Convention. "Sanctions"

means to boycott or reject goods and services that have been produced with child labour as described under Article 3(a) to (d). These sanctions could probably be extended to countries that have not ratified the proposed Convention and have serious violations of the provisions of Article 3. Paragraph 2: The word "time-bound" does not contradict the provisions of Article 1, as "time-bound" measures refer to measurable indicators or parameters to determine the progress member States will be making on the provisions of Articles 1 and 7. Thus member States shall, after consultation with organizations of employers and workers, produce action plans, such as harmonizing national legislation with the Convention. Taking steps to have the provisions of Article 3 come under the penal code by the year 2000, raising school enrolment from 76 per cent to 86 per cent by the year 2000 and to 96 per cent by the year 2001, increasing school completion rates for children up to age 15 from 50 per cent to 65 per cent by the year 2000 and to 80 per cent by 2001, and so on, are examples of time-bound measures. Paragraph 2(b): The words "removal from work" are a specific reinforcement of Articles 3, 4, 5 and 6, complementing actions to prevent the re-entry of children either into the economic sector from which they have been removed or into another sector.

Republic of Korea. Paragraph 2: Governments should take immediate action to root out the worst forms of child labour. However, the phrase "time-bound measures" should be kept in place so that member States may take policy measures based on a time-frame suited to their particular situations. Paragraph 2(b): The ultimate goal of the proposed Convention is the "immediate elimination of the worst forms of child labour". The proposed Convention is significant as the first step towards eliminating all kinds of child labour, at a time when the ratification rate of Convention No. 138 is low, and the worst forms of child labour still exist around the world. However, the reference to "access to free basic education" may be an obstacle to realizing this ideal, even though this paragraph requires each Member to take "time-bound measures", not "immediate measures". A provision which requires each Member to provide access to free basic education for children aged 18 years or younger is impractical, given that the worst forms of child labour occur mainly in the developing countries. The specific purpose of the proposed Convention is to eliminate the worst forms of child labour that jeopardize the health and morals of children. The focus of the proposed Convention, therefore, should be to ensure that the worst forms of child labour are abolished first, even in countries where it is hard to completely abolish child labour for economic and social reasons. The means used to eliminate the worst forms of child labour may vary from country to country, but the important thing is to ensure that each country comes up with the most effective policy measures suitable to its particular situation so that the worst forms of child labour will be abolished as soon as possible. If the Convention ignores the unique situation of countries and imposes burdensome obligations uniformly on every country, a number of countries will turn away from the Convention and the elimination of the worst forms of child labour will become but a distant goal. This provision would prevent those countries which cannot afford to provide free basic education from ratifying the Convention, even though they are willing to eliminate the worst forms of child labour. There is a need to invite governments, especially in the case of developing countries, to take measures to transfer children engaged in the worst forms of labour to less harmful ones, rather than to provide access to free basic education for those children. If a Convention, however lofty its ideals may be, cannot be

ratified by a sufficient number of member States, its cause will be lost. What is important is to ensure that each Member commits itself to the goal of eliminating child labour "gradually but steadily" within the limits it faces. Therefore, the phrase "access to free basic education" should be included in the Preamble as a way of drawing attention to the importance of free basic education and also placed in the Recommendation to serve as a guideline for each government. Alternatively, it could be provided for in the Convention, accompanied by another provision which allows each Member to adopt educational programmes appropriate to its own circumstances. In addition, discussions should be held to develop a clear understanding of "basic" education in terms of how many years and what kind of education, and how far "free" goes, given that practices and perspectives on these matters may differ from country to country.

Lebanon. Paragraph 1: Add "through an independent judiciary authority" at the end of the paragraph. Paragraph 2: Replace "time-bound" with "as soon as possible" because many countries cannot fix time limits to comply with the requirements of this paragraph. Paragraph 2(c): It is not very clear who the children at special risk are, how they should be reached out to, or what kind of special situations of girls should be taken into account. These matters must be clarified.

Madagascar. Paragraph 1: Agrees with the text proposed by the Office concerning the provision of penal and other sanctions. Paragraph 2: Keep "time-bound" measures. Within the overall context of child labour certain measures must be implemented immediately, particularly those related to its worst forms. On the other hand, measures implemented through programmes with a longer time frame should pay particular attention to the national and regional socio-economic context. Paragraph 2(b): The original Office text "removal from such labour" is more appropriate.

Mali. The word "time-bound" may create some confusion. The measures to secure immediate elimination should be clearly defined to provide for the removal of children from the worst forms of child labour.

Mauritius. Paragraph 2: Add a subparagraph (d): "establish appropriate structures and mechanisms that provide education and training for children who are not in school".

Mexico. Under Mexico's proposal for a Recommendation only, this would become a Paragraph in the Recommendation. Paragraph 1: This should read: "Each Member should designate the competent authority and take all necessary measures to supervise the effective implementation of the provisions on the immediate prohibition and progressive elimination of the worst forms of child labour, including the provision of sanctions, as appropriate". Paragraph 2: Delete "time-bound". Paragraph 2(b): Insert after "removal from" the words "the worst forms of". Add a new clause: "promote international cooperation or assistance among Members". Delete paragraph 3, since it is proposed to be included in paragraph 1 of this Article, as amended. Amended versions of Paragraphs 13 and 14 of the proposed Recommendation would be inserted after this provision. See under those Paragraphs. Add a new title "Other measures" to go between this and the amended version of the next Paragraph. Add a new title "Programmes of action" after Paragraph 14.

Morocco. Paragraph 1: Suggests the following amendment after "effective implementation": "and strict enforcement by any appropriate means of the provisions giving

effect to this Convention, including the application of sufficiently dissuasive penal sanctions". Paragraph 2(a): After "from engaging" add "or being engaged".

Netherlands. Paragraph 1: Agrees with the Office's proposal: "penal sanctions or, as appropriate, other sanctions". Paragraph 2: It is better to delete the reference to "time-bound" because it is ambiguous. The Government is open to discussing alternative proposals to create more pressure on the implementation of the measures to be taken. An interesting text proposal is that made by the FNV: "such programmes should be completed within the shortest possible time frame". If this is accepted, the term "time-bound" should be qualified or replaced. Paragraph 2(b): The word "such" should be inserted before "work" to clarify the purpose of the proposed Convention. It should be stressed in the discussion, however, that this may not be interpreted as approving the removal of children from the worst forms of child labour and allowing them to work in a way that is incompatible with Convention No. 138. Insert "simultaneous" before "rehabilitation".

FNV. Paragraph 2: Leave out "such" before "work". See observations of the Government.

New Zealand. Paragraph 1: Supports the proposal made by the Office for the phrase preferably to read: "including the provision and application of penal sanctions or, as appropriate, other sanctions". Paragraph 2: For the reasons outlined in the comments under the Preamble, i.e. that not all forms of child labour are considered to be harmful, it is proposed that the words "the worst forms of" be inserted before "child labour".

NZEF. Paragraph 1: Agrees with the Government and supports the Office's proposal so that the imposition of penal sanctions is optional. Paragraph 2: Agrees with the Government's proposal to insert "the worst forms of", but is concerned that this will not entirely eliminate the difficulty experienced by countries such as New Zealand which, as explained, countenance some forms of child labour. The paragraph as currently worded refers to the importance of education in eliminating child labour, not just the worst forms, while the Government's amendment seeks to place the emphasis back on the worst forms of child labour. Paragraph 2(b): Even if amended in line with the Government's proposal, it is conceivable that the words "provide the necessary and appropriate direct assistance for their removal from work" could be read as applying to any form of child labour, legitimate or otherwise. For this reason, the words "from the worst forms of" should be inserted before the word "work". If it is decided to retain a reference in the proposed Convention to forms of child labour other than the worst forms, provision would need to be made for exceptions in accordance with national law and practice.

NZCTU. Paragraph 2: Disagrees with the Government's comment that paragraph 2 should refer to eliminating the "worst forms of child labour" and not all forms of child labour. Supports the wording "all forms of child labour" for the reasons stated in its comments on the Preamble.

Norway. Paragraph 2: Supports the text with reference to "effective and time-bound measures"; however, there should be a reference to Article 5, which calls for the immediate elimination of the worst forms of child labour, to emphasize that this paragraph is not meant to weaken the obligations under Article 5.

Pakistan. Paragraph 2(b): Direct assistance for removing children from work can be a difficult proposition for financially strapped developing countries.

Peru. Agrees with the Office proposal to amend this to: "including the provision and application of penal sanctions or, as appropriate, other sanctions".

Portugal. Paragraph 1: Supports using the phrase "the provisions giving effect to" because it is the provisions at the national level which are in question. Prefers the phrase "including the provision and application of penal sanctions, or, as appropriate, other sanctions". Paragraph 2: The term "time-bound" should be omitted as it contradicts Article 1, which calls for measures to secure the prohibition and immediate elimination of the worst forms of child labour. Paragraph 2(b): Supports the formulation in the proposed text.

CIP. Paragraph 1: The provision of penal sanctions or lack thereof is a question for member States and should not be dealt with in the proposed Convention. Paragraph 2(b): The possibility of member States guaranteeing access to free basic education implies waiting and is dependent on the economic and financial situation in individual States. It should therefore be defined internally by States.

Senegal. Paragraph 1: Maintain the original formulation, which will enable Members to apply all types of sanction that may be effective within the context of their national legislation or specific situation. Paragraph 2: There should be two stages in the "elimination" of child labour: immediate action in the case of the worst forms, and "removal" of children from work "within a reasonable period of time", because accompanying measures such as rehabilitation and reintegration take much longer. It is thus proposed to replace "and time-bound" with "within a reasonable period of time". Paragraph 2(b): There are two options concerning "their removal from work": removal from work to prevent children from being engaged in the worst forms of child labour; and removal, but without appropriate rehabilitation and reintegration measures, which may push children into the worst forms of child labour such as prostitution, trafficking, etc. The focus must be on prevention through universal free and compulsory basic education. It is necessary to improve the working conditions of those children who already find themselves in a work situation, with an eye to their gradual removal from work by helping their families.

South Africa. Paragraph 1: Supports the changes proposed by the Office. Paragraph 2: The importance of education in eliminating child labour is acknowledged, but instead of the reference being a provision in paragraph 2, it should be added as a new paragraph 3 and read: "The importance of education in eliminating child labour is taken into account when effect is given to this Article." The phrase "time-bound" may seem to contradict the need for the immediate elimination of child labour. An amendment that would address these concerns, such as using "immediate and/or time-bound measures, as appropriate", would be supported. Regarding "access to free basic education", it is assumed that not all education must be free, but that education for children who need to be removed and rehabilitated is free. This is important, otherwise a number of countries would find the proposed Convention difficult to ratify. It may be useful to further clarify "free education". Paragraph 2(b): Supports including the word "such" before "work".

BSA. Paragraph 1: Supports the alternative wording proposed by the Office. Paragraph 2: Agrees that the word "time-bound" is problematical and thus it would be best to delete it. Paragraph 2(b): Supports inserting the word "such". The reference to "access to free basic education" raises many questions regarding the exact meaning and the effect that it would have on universal ratification. Access to free basic educa-

tion is simply not an option in many countries. In the interest of universal ratification, "access to free" should be deleted.

Spain. Paragraph 1: Delete "as appropriate". Paragraph 2: After "eliminating" add "the worst forms of child labour referred to in this Convention". Paragraph 2(b): The expression "removal from such work" is more appropriate, leaving it to the national legislation of each Member to adopt effective measures. If the obligation to "remove" children from work, rehabilitate and socially reintegrate them is a matter of removing persons under the age of 18 from illicit or illegal work, there is no problem. However, in the case of minors working in inadequate or hazardous safety and health conditions, the task of the State must be to prevent these hazardous or unhealthy conditions from occurring, and not to remove minors from such work. It is a general shortcoming of the proposed Convention that it contains no reference to the protection of minors actually working above the legal age of compulsory schooling but under the age of 18, since it is precisely this lack of protection which results in their often working in intolerable circumstances.

CEOE. Paragraph 1: Prefers the expression adopted by the Committee because it reflects more accurately what was agreed upon. Paragraph 2(b): This should refer to "the removal from work of children engaging in the worst forms of child labour", otherwise the proposed Convention would be contrary to Spanish legislation, which allows persons under 18 years of age to work, except for those presumed to be excluded.

Sweden. Paragraph 1: Supports the Office's proposal to use "including the provision and application of penal or, as appropriate, other sanctions". Paragraph 2: Replace "in eliminating child labour" with "as essential for children's development and future prospects" and replace "time-bound" with "immediate". Paragraph 2(b): Insert "such" before "work".

Switzerland. Paragraph 1: Agrees with the Office's proposal. Paragraph 2: The use of the term "time-bound" would contradict the reference to the immediate elimination of the worst forms of child labour; the term should therefore be deleted. Paragraph 2(b): Refer to "removal from the worst forms of work".

UPS. Paragraph 2: Agrees with the Government that "time-bound" should be deleted. Paragraph 2(b): Agrees with the Government proposal to refer to the removal from the worst forms of work.

CSC/CNG. Paragraph 1: Agrees with the Office's proposal. Paragraph 2: Agrees with the Office. Paragraph 2(b): Agrees with the Government proposal.

FSE/VSA. Paragraph 1: Supports the Office's interpretation and formulation with regard to "as appropriate" and supports the phrase to read "including the provision and application of penal sanctions or, as appropriate, other sanctions". Paragraph 2: There is concern with the term "time-bound". If "time-bound" is to be used it should be more precisely defined, such as "with short-term implementation deadlines". Paragraph 2(b): Proposes "removal from these forms of work" to replace the phrase "removal from work", which is too broad.

Syrian Arab Republic. This Article should be shortened and simplified. The abolition of child labour should be linked to the ban on their employment in the most intolerable forms of child labour by effective and timely measures, mainly through free basic education, and direct and immediate assistance to remove children from employment, rehabilitate them and bring about their social reintegration.

Ministry of Industry. Paragraph 1: Delete "implementation and", because stipulating punitive sanctions for acts violating any legislation is enforceable by law, and the purpose of issuing various types of legislation is to have them implemented. Paragraph 2(a): Amend the wording to read "eliminate child labour in ...", rather than "prevent children from engaging in ...", to harmonize with the wording of the Convention and the meaning of the introductory sentence of this paragraph. Furthermore, "eliminate" covers present cases and bans their future recurrence, while "prevent" would only cover future occurrences.

Tunisia. Paragraph 1: Agrees with the Office's proposals. Paragraph 2(a): Believes it is necessary to mention "time-bound". It will be up to the ILO supervisory machinery to decide whether time limits specified by member States are reasonable. Paragraph 2(b): Proposes that reference should be to "removal from the worst forms of work".

Turkey. Paragraph 2: The phrase "time-bound measures" is rather restrictive and might hamper the extensive ratification of the Convention, which is meant to be the eighth ILO core Convention concerning fundamental rights. Therefore, "gradual" or "progressive" should replace "time-bound".

Turkish Confederation of Employer Associations (TISK). Paragraph 2(b): Although the proposed Convention is not inconsistent with conditions in Turkey, the "direct assistance for their removal from work, rehabilitation and social reintegration through, inter alia, access to free basic education" could entail an obligation which Turkey would be unable to fulfil. Therefore the reference to "free compulsory education", to which many government representatives have expressed opposition in the Committee on Child Labour, should be placed in the text of the Recommendation rather than in the Convention.

Uganda. Paragraph 2: Supports the use of the term "time-bound". The necessary steps to be taken to eliminate the worst forms of child labour included in subparagraphs (a) to (c) certainly cannot be taken at once. For instance, the necessary and appropriate direct assistance for their "removal from work, rehabilitation and social reintegration" may not already be in place for all member States. Time must be given to identify the specific needs, design the interventions, monitor and evaluate, and then the effective elimination could be addressed. The time-bound process is systematic and provides space for each step to be determined.

United Kingdom. Paragraph 1: Accepts the Office's proposed amendment to the reference to "penal sanctions or, as appropriate, other sanctions". It is however suggested that it would be much better to merely refer to "sanctions". Paragraph 2: The term "time-bound" was included in the text to ensure that real commitments were made which had to be implemented in a reasonable time. The argument is noted that this might have the reverse effect by allowing governments to opt for long-term time-bound action. The text also calls for "effective" action and this is taken to include the idea of timeliness. It is suggested that the ideal solution would be to add the phrase "consistent with the need for immediate action" before "take effective and time-bound measures". Paragraph 2(b): In many cases it would be desirable for children who are removed from the worst forms of child labour to then be rehabilitated, no longer work and attend school instead. In practice, there may be circumstances where this is impractical. For example, children in their mid-teens can legally work and it would be

pointless if the Convention suggested otherwise. It is therefore suggested that the text should refer to "such work", which would cover the possibility of 16-year-olds switching to acceptable occupations. The reference to access to basic education should also be retained.

United States. Paragraph 1: Supports the Office's proposal to change the wording to read "including the provision and application of penal sanctions or, as appropriate, other sanctions". Paragraph 2: The issue of "time-bound" measures is closely linked to that of the effective elimination of the worst forms of child labour noted above in the general observations. While it is unrealistic to expect the worst forms of child labour to be eliminated immediately, concrete and comprehensive measures to pursue this goal can certainly be undertaken without any delay whatsoever. Thus, the term "time-bound" is appropriate. Paragraph 2(b): The subparagraph should be changed so that the reference to removal from work is limited to removal from the worst forms of child labour. As noted above concerning Article 3, providing free basic education may not be immediately feasible for all countries. Paragraph 2(c): Under the constitutional doctrine of equal protection, laws in the United States which protect children are not gender-based. Nevertheless, laws of the United States which deal with all children at risk would necessarily afford the protection contemplated by subparagraph (c).

Venezuela. Paragraph 2(b): The proposed Convention should provide more guarantees and should refer not only to access to education but also to the completion of basic education. The word "through" after "social reintegration" should be replaced with "so as to guarantee"; the words "access to" should be followed by "and continued attendance in the educational system until the completion of free basic education". In countries such as Venezuela, where over 90 per cent of children now have access to basic education, children drop out of school at an early age to work because of poverty. It is thus not enough to guarantee universal access to education, steps also have to be taken to see that children do not leave school prematurely. If the proposed Convention afforded more guarantees it would be more compatible with the Convention on the Rights of the Child. Paragraph 2(c): Agrees that it is important to identify children at special risk, but the purpose of identification, to prevent new contingents of children from engaging in the worst forms of child labour, should be clearly stipulated in the proposed Convention.

Venezuelan Workers' Confederation (CTV). Paragraph 2(b): The purpose of the proposed Convention should be to remove children of any age up to 18 immediately from the worst forms of labour and to ensure their rehabilitation and social reintegration, including access to free basic education, within a specified time limit. The idea is that no child under the minimum age should engage in any work, that no child up to the age of 18 should be allowed to engage in the worst forms of labour and that their rehabilitation and reintegration through basic education should be guaranteed.

Zimbabwe. Paragraph 1: Supports the alternative formulation proposed by the Office. Paragraph 2: The term "time-bound" does not express urgency; replace "take effective and time-bound measures to" by "take immediate and effective measures to". Paragraph 2(b): Supports "removal from such work".

Holy See. Paragraph 1: Supports the changes proposed by the Office: "including the provision and application of penal sanctions or, as appropriate, other sanctions".

Paragraph 2: Delete the word "time-bound". This will leave no doubts concerning the urgency for the immediate elimination of the worst forms of child labour.

Office commentary

Paragraph 1

The Office had invited views on the intent of the phrase "including the provision and application of penal and other sanctions, as appropriate". It could be understood to mean that measures would not necessarily include sanctions, but that penal and other sanctions would be included among the measures, if appropriate. If, as the Office understood from the Committee's discussions, the intent is that there have to be sanctions but that the types of sanctions could be, as appropriate, penal or other sanctions, the Office suggested that the phrase might preferably read: "including the provision and application of penal sanctions or, as appropriate, other sanctions". The latter wording has been incorporated into the text as the comments by and large support the change as being in keeping with the intent of the text adopted by the Committee. However, a few replies advocated avoiding the emphasis on penal sanctions and listing a broader range of legal means of action.

Paragraph 2

An amendment was adopted in the Committee to insert "time-bound" measures. There was concern among some members of the Committee that there is now an inherent contradiction with earlier provisions, in particular Article 1, which requires measures to secure the prohibition and immediate elimination of the worst forms of child labour. The replies indicate considerable sentiment from quite a number of governments and workers' organizations that even if measures are required for immediate elimination, there is no inconsistency with requiring time-bound measures as well. It is believed that comprehensive action against the worst forms of child labour must take place immediately, which could include time-bound measures on certain specific matters. At the same time, it is suggested that the term be modified or replaced to clarify that time-bound measures must nevertheless be carried out "within the shortest possible time-frame" or "as soon as possible". One line of analysis argues that "immediate elimination" should be kept under Article 1, which will entail certain kinds of measures, and that "time-bound" be kept in Article 7 because the measures mentioned in subparagraphs (b) and (c) of paragraph 2 cannot always be taken immediately.

Some governments and employers' organizations believe the term could create confusion and that the reference should therefore be deleted. There is also concern about the placement in the introductory part of the paragraph, which puts the emphasis on time-bound rather than on immediate measures.

Given the doubts expressed in the comments about the implications of the use of the term and that there is general agreement that some measures in this Article require immediate action, while others could be time-bound, it seems desirable to bring consistency and clarity to the text about what is immediate and what could be time-bound (see also the commentary on Article 1). For example, this could be done by inserting "immediate" where the intent is for immediate measures, such as "immediate" removal from work (although the issue of removal from the worst forms or from all work will have to be clarified). Another possibility is to redraft the first part of the paragraph to read "take effective *immediate and* time-bound measures" without

further specification, so that among the measures to be taken in subparagraphs (a) to (c), some would have to be immediate. This would also be consistent with the proposal under Article 1 to require "immediate" measures.

A few replies criticize the reference to "taking into account the importance of education", suggesting that it creates confusion concerning the scope of the obligation, and a few replies reiterate the objection to referring to all child labour instead of the worst forms.

Subparagraph (b)

The issue of whether the reference should be to removal from "work" or "such work", meaning the worst forms of child labour, has been discussed in the commentary on the Preamble. There is divided opinion about the reference in this phrase as well. Some employers' organizations, in particular, are concerned that in this phrase providing for removal from all work could jeopardize wide ratification and fear that it may not be economically acceptable for the concerned children or their families.

Whichever intent is accepted, however, the present drafting in this subparagraph is unclear about the antecedent of "their". It was intended to refer to children in the worst forms of child labour but, read together with subparagraph (a), it could literally mean all children. To clarify this, subparagraph (b) could be redrafted to read: "provide the necessary and appropriate direct assistance for the removal of children in the worst forms of child labour from work and for their rehabilitation and social reintegration through, inter alia, access to free basic education;". It remains for the Conference to decide whether the phrase should refer to removal from "such" work.

Concern is also raised about the reference to "access to free basic education". Questions about the definition of basic education have been addressed in the commentary under Article 3. Some commentators are particularly concerned about the possible deterrent effect on ratifications because of the categorical nature of the requirement – access to free basic education must be part of the assistance provided for rehabilitation and social reintegration. There is also a lack of clarity about "access" and "free". Is the access to be to the system of free basic education in the country where such system exists, or is such a system to be created? What is meant to be included in "free"?

Article 8

Members shall take steps, as appropriate, to assist one another in giving effect to the provisions of this Convention through international cooperation or assistance.

Observations on Article 8

Bolivia. Would not be able to apply the provisions of the proposed Convention immediately due to structural problems. To do so would require technical and financial resources. Consequently, a supplementary provision should be added under which the industrialized countries undertake to provide resources for technical and financial co-operation towards programmes of action.

Bulgaria. Agrees.

Ecuador. Agrees.

Egypt. Approves the proposed text.
Egyptian Trade Union Federation. Agrees.

El Salvador. Agrees with the proposed text.

France. CFDT. A reference to the need for governments to support cooperation between the ILO and other international institutions regarding the implementation of the proposed Convention should be included in the text of the proposed Convention. Additionally, firm reference should be made in the proposed Convention to the need for legal or judicial cooperation between the ILO and its member States. This should include a provision requiring governments to make available to the ILO all relevant information in their possession concerning violations of the proposed Convention's provisions in other countries.

Germany. Although the use of the words "as appropriate" shows that this provision cannot, strictly speaking, be the subject of a Convention, it would appear appropriate to retain it. The obligation of ratifying States which do not take part in mutual cooperation and assistance will consist of explaining why this is not being done in their reports on the application of the Convention.

DGB. During the 1998 Session of the Conference certain governments called for a clear reference to the need for international assistance which would have placed all ratifying States (even the least developed) under a virtually unlimited obligation to assist other governments in the application of the proposed Convention. The DGB supports a reference in the proposed Convention to the effect that governments are required to promote cooperation between the ILO and other institutions to assist in the application of the proposed Convention. There should be an especially strong reference, preferably in the proposed Convention, to the need for legal (or judicial) cooperation, including a clause obliging governments to place at the disposal of the ILO information in their possession on violations of the provisions of the proposed Convention in other countries. This applies also to Paragraph 15 of the proposed Recommendation

Ireland. ICTU. Certain governments are seeking a clear reference to the need for the international community to provide assistance. The proposal put forward by some governments at the 1998 Session of the Conference would have provided for an almost unlimited obligation on all ratifying governments (even from the least developed countries) to assist other governments in implementing the new Convention. A reference should be included in the Convention to the need for governments to support cooperation between the ILO and other institutions to support implementation of the Convention. Strong reference should also be made, preferably in the Convention, to the need for legal (or judicial) cooperation, including provision for governments to make available to the ILO relevant information in their possession about violations of the provisions of the Convention in other countries.

Italy. CGIL, CISL and UIL. The following concepts should be inserted: (a) the promotion of cooperation between the ILO and the other institutions to promote the implementation of the Convention; (b) legal cooperation; and (c) the communication by member States of information to the ILO relating to violations of the Convention in other countries.

Japan. See comment under Paragraph 15 of the proposed Recommendation about including a list in the Convention.

Lebanon. Replace "through international cooperation or assistance" with "through international or bilateral cooperation".

Mexico. See comments under Article 7.

Morocco. Replace the current text by the following: "International cooperation should be launched to eliminate the worst forms of child labour. Such cooperation should include, in particular:

(a) mobilizing resources for national and international programmes;

(b) mutual legal assistance;

(c) technical assistance, including the exchange of information."

Pakistan. The reference to international cooperation is couched in somewhat vague and general language. The proposed Convention imposes stringent obligations on countries where the worst forms of child labour are prevalent by asking them to eliminate such practices immediately. At the same time, it fails to provide for any corresponding obligations for the International Labour Organization or the international community, which must be in a position to assist and support countries who are already doing their best to address the problem with the limited means available. This is not to deny that the primary responsibility for eradicating extreme forms of child labour rests with the countries themselves. However, given the nature of the root causes of this problem, there must be an element of international solidarity and special efforts on the part of the International Labour Office.

South Africa. Supports the proposed text.

United States. Supports this Article as presently drafted.

Office commentary

Several comments suggest strengthening this provision either by bringing the provisions of Paragraph 15 of the proposed Recommendation into the proposed Convention or by adding other details. Several workers' organizations, for example, argue for references to cooperation between the ILO and other institutions to promote and support implementation of the Convention and to cooperation on legal and judicial matters, including communication by governments to the ILO of information on violations of the Convention in other countries. One government also reiterated a call in the first discussion to place obligations on the ILO and the international community to assist and support those countries with the worst problems and which have limited means.

Observations on the proposed Recommendation concerning the prohibition and immediate elimination of the worst forms of child labour [12]

Observations on the title

Mexico. Delete the title. See above under general observations concerning Mexico's proposal for a Recommendation only.

[12] The observations are preceded by the relevant texts as given in the proposed Recommendation set out in Report IV(1).

Sudan. The title should be revised to read: "Recommendation concerning measures to be taken for the immediate elimination of the worst forms of child labour, 1999". See comments under the Preamble to the proposed Convention.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999;

adopts this day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Immediate Abolition of the Worst Forms of Child Labour Recommendation, 1999:

Observations on the Preamble

Egypt. Egyptian Trade Union Federation. Supports the proposed Recommendation and considers it as an acceptable basis for discussion, taking into account the observations made below. The Preamble should provide that the provisions of the Recommendation are designed for guidance, so that these detailed provisions do not impede the ratification of the Convention once adopted.

Mexico. Replace by the Preamble as amended (see observations on the Preamble to the proposed Convention).

1. The provisions of this Recommendation supplement those of the Immediate Abolition of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

Observations on Paragraph 1

Australia. Has concerns about the phrase "The provisions of this Recommendation should supplement and be applied in conjunction with those of the proposed Convention." The proposed Recommendation should not be regarded as the only way in which the proposed Convention could be implemented. The provisions of the proposed Recommendation should not be regarded as compulsory as it could prove to be a barrier to ratification. Australia notes the comments of the representative of the Legal Adviser in paragraph 238 of the 1998 Conference Committee's Report [13] on standard wording of Recommendations and on this basis could support this wording.

Ecuador. Agrees.

[13] *Provisional Record* No. 19.

El Salvador. Agrees with the proposed text.

Mexico. Delete this, in view of Mexico's proposal to adopt a Recommendation only.

South Africa. BSA. This Paragraph suggests that the proposed Recommendation should not be used without the proposed Convention. This implies that countries that do not ratify the proposed Convention will not be encouraged to at least implement some of the proposals in the proposed Recommendation. This approach is counter-productive and it should be made clear that the proposed Recommendation could be used as a "stand-alone" instrument in combating the worst forms of child labour.

United States. Supports this Paragraph as presently drafted.

Office commentary

While there are very few comments on this provision, a few concerns are raised in the general observations and again here about the effect of saying that the provisions of the Recommendation "should be applied in conjunction" with those of the Convention, and on the legal status of the Recommendation and its ability to stand alone. The text is the standard wording now used in Recommendations which accompany Conventions to avoid repeating definitions agreed on in the Convention. In no way can the Recommendation become legally binding by virtue of this wording. The Recommendation is meant to supplement the new Convention and give guidance on its implementation. Several of its provisions are specifically connected with the Convention, such as the kinds of work considered to be the worst forms of child labour. At the same time, the provisions are drafted to refer to national provisions on the prohibition and elimination of the worst forms of child labour, whether these are enacted pursuant to the Convention or not, which also allows the Recommendation to be read independently of the Convention.

I. Programmes of action

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented in consultation with relevant government institutions, employers' and workers' organizations and, as appropriate, other concerned groups. They should aim at, inter alia:

(a) identifying and denouncing the worst forms of child labour;

(b) preventing children from engaging in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social reintegration through measures which address their educational, physical, emotional and psychological needs;

(c) giving special attention to:

  (i) younger children, taking account of the extreme impact of the worst forms of child labour on their development;

  (ii) the problem of hidden work situations, in which girls are at special risk;

  (iii) other groups of children with special vulnerabilities or needs;

(d) identifying and reaching out to communities where children are at special risk;

(e) informing, sensitizing and mobilizing public opinion and interested groups, including children and their parents.

Observations on Paragraph 2

Argentina. Clause (c)(i): Agrees with the proposal to delete the phrase "taking account of the extreme impact of the worst forms of child labour on their development", as otherwise the special attention given to younger children could be made subject to the identification of this impact. Clause (c)(ii): Agrees with the insertion of a comma after "work situations".

Australia. Clause (c)(i): The special situation of young children should be explicitly recognized, therefore keep the phrase "taking account of the extreme impact of the worst forms of child labour on their development", but replace "taking account of" with "on account of" or "acknowledging". This should not lead to misinterpretations and would provide amplification of the intent of the clause. Clause (c)(ii): Supports the comma inserted by the Office after "work situations" to provide greater clarity. Welcomes the acknowledgement of hidden labour situations. Responses to child labour issues must consider that, particularly in developing countries, a relatively small proportion of child labour occurs in controlled factory environments. Much of it occurs in homes, on the streets, in agriculture and other areas which are often less visible and more difficult to monitor and regulate.

Belgium. Clause (c)(i): Supports the proposal made by the Office to delete the phrase "taking account of the extreme impact of the worst forms of child labour on their development".

CNT. Clause (c)(i): When referring to younger children, a specific age should be mentioned. The age of 12 is usually the ultimate minimum age for compulsory education.

Bolivia. Clauses (c)(i) and (iii): Insert the word "working" before the term "children", so that the special attention will refer not to children in general but to younger working children.

Botswana. Clause (c)(i): Agrees with the change proposed by the Office.

Brazil. Clause (c)(ii): Although, of course, the situation of girls, as far as hidden work is concerned, deserves special attention, the risks facing boys cannot be disregarded. Suggests an alternative formulation: "the problem of hidden work situations, in which girls are especially at risk".

Bulgaria. Clause (c)(ii): The clause should be reformulated to encompass all types of hidden work situations that are meant, not only those in which girls are at special risk.

Canada. Add "and persons" after "other concerned groups", as there are individuals with extensive expertise in child labour who may not necessarily be attached to a group. Clause (c)(i): Agrees with the Office's proposal to end the sentence after "younger children". Alternatively, the words "taking account" could be replaced by "because". Clause (d): This requires clarification as there is a danger of discrimination against certain ethnic or religious communities. Recommends the word "communities" be replaced by "milieux".

CEC. Clause (c)(i): Agrees with the Office's proposal. Clause (c)(ii): Does not believe the Office's proposal adds clarity to the provision. However, the criticism made by the Office is valid and the current wording should be improved. It must be clearly stated that all "hidden work situations" must be given special attention. Redraft

as "the problem of hidden work situations, including those in which girls are at special risk".

Chile. Clause (c)(i): The phrase "taking account of the extreme impact of the worst forms of child labour on their development" should not be deleted in its entirety. It could be helpful to reflect on why younger children need special protection. The word "taking" in this clause could be interpreted as the need to find or seek out the extreme impact on some, rather than on all, before taking any action. As a result, only some children, those on whom there has been an extreme impact, would receive special attention. Consequently it is proposed to say: "younger children, given the extreme impact of the worst forms of child labour on their development", so as to give it both an explanatory and normative flavour.

CONUPIA. Clause (c)(i): Agrees with the Office's proposed amendment. Clause (c) (ii): Redraft as: "to girls in hidden work situations, where they are at special risk". This would make it clearer by referring in the first place to the intended subject and then to the specific condition to which attention is drawn.

Czech Republic. Clause (c): The meaning of "younger children", "hidden work" and "other groups of children with special vulnerabilities" should be clearly defined, for example, as disabled children, children without families, etc.

Ecuador. Agrees.

Egypt. Egyptian Trade Union Federation. Paragraph 2(b): Insert "subsistence" after "address their" and before "educational".

El Salvador. Agrees with the proposed text.

Estonia. Clause (c)(i): Supports the Office's proposal to delete the phrase after "children".

Finland. Agrees with the Office's proposal for clause (c)(i) and the changes made to clause (c)(ii).

Germany. Clause (c)(i): The Office's view that "taking account of the extreme impact of the worst forms of child labour ..." could be misinterpreted is not convincing, and therefore its deletion is not supported. To prevent any misunderstanding, the following new text could be considered: "especially in view of the particularly harmful impact of the worst forms of child labour on their development."

BDA. Move to after Paragraph 15. Clause (c)(i): Agrees with the Office's proposal.

Greece. Agrees to the proposed deletion of the phrase after "younger children".

Ireland. SIPTU. See comments under Article 6.

Italy. Clause (c)(i): Agrees with the Office's proposal to delete the phrase. However, the expression "younger children" does not provide any definitive level, and leaves member States free to interpret the age limit that defines younger children. Clause (c)(ii): Agrees with the change made by the Office because it provides greater protection to girls.

CONFCOMMERCIO. Agrees with the changes made by the Office in clause (c).

CGIL, CISL and UIL. Keep the text adopted in the Committee. Clause (c)(ii): The Office's insertion of a comma is better to specify that the reference is to all hidden work situations.

Japan. Clause (c)(i): Delete "taking account of the extreme impact of the worst forms of child labour on their development".

Kenya. COTU. Clause (c)(i): A certain age should be specified, preferably 12 or 13, in line with the minimum age for light work in Convention No. 138. Clause (c)(ii): Extend to "obscure" or "clandestine" work as hidden work refers to work that cannot be seen with the naked eye, whereas in many cases afflicted children can be seen to be economically active but in circumstances which are clandestine or obscure, such as domestic service, the informal sector and in subcontracted work or piecework. An activity that is clandestine in nature is one that is either criminal or bordering on criminality, and permits employers to use their perceived immunity to act with impunity against children in workplaces. Clause (d): It is unclear what "special risk" refers to. Add a reference to cultural practices and armed conflicts or war at the end of the clause. Clause (e): Replace "interested groups" with "civil society organizations" because all civil societies have an interest.

Mexico. Clause (c)(ii): State specifically what is meant by "hidden work" and define its scope.

Netherlands. Agrees with the Office's proposals.

New Zealand. Clause (c)(i): Supports the proposal made by the Office to delete the phrase "taking account of the extreme impact of the worst forms of child labour on their development".

NZEF. Clause (c)(i): Agrees on the proposed deletion.

Peru. Agrees with the deletion of the phrase "taking account of the extreme impact of the worst forms of child labour on their development".

Portugal. Clause (c)(i): Does not agree with the Office's proposal to delete the phrase beginning with "taking account", because the phrase specifies the objective of giving special attention to younger children.

Senegal. Clause (c)(i): Special attention should also be given to less young children who are engaged in the worst forms of child labour. Agrees with the proposed text but suggests replacing the word "extreme" with "negative". Clause (c)(ii): Proposes to include "hidden work carried out by girls" to better reflect the special situation faced by girls in domestic services.

South Africa. This part on Programmes of action does not refer to ensuring that adequate legislation is in place to prohibit child labour. This should be mentioned since some countries do not have an adequate or appropriate legislative framework. Clause (c): Supports the Office's proposal to delete "taking account ... development" and to add a comma in subclause (ii). Clause (e): The word "interested" referring to groups may be inappropriate. More appropriate words include: "interest groups", "stakeholders", "concerned" groups and "relevant" groups.

BSA. Clause (c): Supports the Office's alternative wording. Clause (e): The word "interested" should be changed to "interest".

Spain. Clause (a): A distinction should be made between what is specifically considered "the worst forms of child labour" and illicit activities that use children for commercial purposes. Clause (c)(i): Delete the phrase beginning "taking account of the extreme impact ...". It is obvious that the worst forms of child labour always have an

extreme impact on young children and the special attention will not vary depending on this. Clause (c)(ii): Agrees with inserting a comma. It makes it clear that all hidden work situations are meant, and that, although girls are at special risk in such situations, this is not the only hidden work referred to in the clause.

Sudan. Insert "most representative" before "employers' and workers' organizations".

Sweden. Clause (e): Delete "and interested groups" because these groups are already best informed about and the most concerned with the problems of child labour and should be consulted as laid down in the first sentence of Paragraph 2.

Switzerland. Clause (c)(i): Disagrees with the Office's proposal. Suggests replacing (i) by the following: "younger children, emphasizing the extreme impact of the worst forms of child labour on their development".

CSC/CNG. Clause (c)(i): Same proposal as the Government.

FSE/VSA. Clause (c)(i): Agrees with the Office's proposal to delete the phrase.

Syrian Arab Republic. Clause (c)(ii): This should be reworded to bring it in line with the text of clause (c)(i) to read: "girls at risk in hidden work situations". Clause (e): Replace the words "and their parents" with "and their families, to the most intolerable forms of child labour".

Ministry of Industry. Clause (b): Replace "through measures which address" by "by taking measures to cover". Clause (c)(ii): This is ambiguous and unclear as to where it applies. Add a new clause after clause (d) to refer to communities under occupation and the need to determine the competent authority with legitimate international status with which to establish contacts.

Tunisia. Clauses (c)(i) and (c)(ii): Agrees with the Office's proposals.

United Kingdom. The suggested deletion is acceptable for the reasons given by the Office.

United States. Supports the Office's proposal to delete the phrase "taking account of the extreme impact of the worst forms of child labour on their development".

Venezuela. Clauses (d) and (e): The text has to spell out why communities where children are at special risk need to be identified and reached out to, and why public opinion and interested groups, including children and their parents, need to be informed, sensitized and mobilized. The reason is obviously to prevent children from engaging in the worst forms of child labour.

Office commentary

Clause (c)(i) provides that special attention should be given in programmes of action to younger children. The phrase that had followed, adopted by an amendment in Committee – "taking account of the extreme impact of the worst forms of child labour on their development" – was explanatory rather than normative, and could have been interpreted the wrong way – namely, to mean that the special attention to be given to younger children would vary according to the identification of the extreme impact on their development. The majority of replies agree and support its deletion, and the phrase has accordingly been stricken from the text. However, a number of comments suggest redrafting the phrase to specify the objective of giving special attention to

younger children, such as "because of", "acknowledging", "emphasizing", or "especially in view of" the extreme impact of the worst forms of child labour on their development.

The only other changes to this Paragraph have been made in clause (e) based on amendments suggested in the replies. The reference to "interested" groups has been changed to "concerned" groups, to emphasize those who could and should take action, and "and their parents" has been replaced by "and their families", to encompass the broader family unit.

II. Hazardous work

3. In determining the types of work or activity referred to under Article 3(d) of the Convention, and in identifying their existence, consideration should be given, as a minimum, to:

(a) work and activities which expose children to physical, emotional or sexual abuse;

(b) work underground, under water, or at dangerous heights;

(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) work under particularly difficult conditions such as work for long hours or during the night or work which does not allow for the possibility of returning home each day.

Observations on Paragraph 3

Australia. Clause (d): Include "work in confined spaces".

Austria. See comments under Article 3 about including such examples in the proposed Convention.

Belarus. Clause (d) should read: "work in an unhealthy environment, in the process of which children may be exposed to substances, agents, temperatures, processes, noise levels or vibrations that are hazardous and damaging to their health". Clause (e): Should read: "work under particular conditions: at night, or for long hours in excess of permitted standards, or work which does not allow for the possibility of returning home each day".

Belgium. CNT. Clause (a): Such a reference should be made in Article 3 of the proposed Convention instead of Paragraph 3 of the proposed Recommendation.

Bolivia. A clear distinction should be drawn between criminal offences and child labour. There are activities in which the child is a victim or object of the work done by other persons, while in other cases the child is the worker. In Bolivia the provisions of this Paragraph are contained in the Minors' Code and in the preliminary draft of a Children's and Adolescents' Code.

Canada. Supports the criteria as they can assist the competent authority in determining what constitutes the worst forms of child labour. The Office is asked to suggest other language or clarify that some of the activities described would not constitute the

worst forms of child labour if undertaken under safe and supervised conditions, with the appropriate legislation in place.

CEC. Does not agree with the CLC's proposal to move the definition of "Hazardous work" from the proposed Recommendation to the proposed Convention as there is a significant difference between having a list of factors to be considered in determining if a particular type of employment is hazardous as opposed to a list of factors which, ipso facto, make that work hazardous. Clause (c): Should be expanded with a specific reference to "weapons", as children should not be involved in work which requires the use of weapons in active combat.

CLC. See under Article 3 of the proposed Convention.

Czech Republic. Clause (d): Include a reference to adequate lighting as many reports indicate that many children perform tasks, for example carpet weaving, under hazardous conditions which constitute an immediate danger to their eyesight. Clause (e): A very strict interpretation of this provision could mean that children could perform in theatres only to a very limited extent and would be prevented from participating in travelling tours of bands, dancers and singers, both in their home countries and abroad, because they are usually unable to return home every day. Both the proposed Convention, under Article 4, and the proposed Recommendation should avoid too many restrictions on child performers and their public performances.

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Estonia. A clause concerning dangerous work that has a negative impact on a child's morals, such as the sale of liquor or tobacco, could be added.

Ethiopia. Clause (e): A specific reference to child domestic workers should be included, as in most cases their work exposes them to abusive and exploitative conditions, including sexual harassment, physical abuse, work for long hours without rest, work which is beyond children's capabilities and work which deprives them of educational opportunities.

Finland. Finland's legislation on young employees contains regulations on working hours. This provision should be included in Article 3 of the proposed Convention. See comments under Article 3. Clause (e): A blanket ban on all the forms and conditions of work listed in this clause would not correspond with Finland's updated legislation on young employees.

TT and PT. Clause (e): Considering that the term "child" refers to children under 18 years of age, this clause could lead to conclusions which are too far-reaching, for example, if work of short duration, such as temporary summer work, is not taken into account. Therefore, work which does not allow for the possibility of returning home each day should be removed from the list.

France. MEDEF. Clause (e): This provision would not be compatible with national legislation, particularly regarding apprentices (night work and the possibility of returning home each day). Therefore the particular status of apprenticeship should be taken into account and not be implicitly considered as one of the worst forms of child labour.

Germany. BDA. The phrase "and in identifying their existence" does not logically belong here and should be deleted. See also comments under Article 4. Redraft the

latter part of the first phrase as: "consideration should be given, taking into account individual circumstances, to:", to make it clear that the hazardous nature of the work in the specific categories referred to also depends on individual circumstances. It cannot be assumed, for example, that "work which does not allow for the possibility of returning home each day" can be regarded as "hazardous" under all conceivable circumstances.

India. See comments on Article 3(d).

Ireland. SIPTU. Clause (d): Include work that exposes children to risking their lives in military conflict. See also comments on Article 3(d).

Italy. CGIL, CISL and UIL. Paragraph 3 should be transferred to the Convention to better define national standards and subsequent actions.

Jordan. Amman Chamber of Industry. See comments under Article 3.

Federation of Jordanian Chambers of Commerce. See comments under Article 3.

Kenya. COTU. Clause (b): Replace "under water" with "marine work" so as to include all associated hazards, such as fast-flowing water, storm water and fish ponds, that children encounter, particularly those below 12.

Lebanon. Clause (d): At the end of the clause add: "or substances emanating vapour or radiation damaging to their health, or other substances used in hard agriculture and heavy industry".

Mexico. See comments under Article 4.

Netherlands. See comments under Article 3 of the proposed Convention.

New Zealand. Clause (b): Add "or in confined spaces" at the end of the clause. Clause (d): Delete "unhealthy". Add "whether natural or man-made" after "agents or processes". Add ", radiation" after "temperatures".

NZEF. Clauses (b) and (d): Supports the amendments proposed by the Government.

Norway. Move the forms of dangerous work listed in this Paragraph to the proposed Convention, to be included where appropriate.

Confederation of Trade Unions in Norway (LO). Move this Paragraph to the Convention.

Confederation of Norwegian Business and Industry (NHO). Supports retaining the text as it is, because of the need for this Convention and future Conventions to be of a universal and general character and to concentrate on the principle of the matter. More detailed provisions belong by definition in the proposed Recommendation. The NHO supports the ILO's efforts to promote ratification of Conventions by developing countries. As was stated in the Governing Body, this is one of the ways leading to that goal.

Portugal. CIP. The definition of the type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children, is a subject that Convention No. 138 refers to in the national legislation of member States. It is therefore not necessary to make provision for it in the proposed Recommendation.

South Africa. BSA. Clause (e): It should be noted that the issue of children being able to return home each day was flagged as a problem area by some representatives.

during the 1998 Session of the Conference. It might be prudent to consider whether the inability of a 16- or 17-year-old to return home every day should be categorized as part of the worst forms of child labour. In this regard, it should be noted that the following applies in some countries: a voting age of 16; a marrying age of under 18; and people under the age of 18 being considered grown up and leaving the parental home. This issue requires further debate.

Spain. Clause (a): This may give rise to certain problems. Using exposure to physical, emotional or sexual abuse as a criterion for determining which types of work shall be prohibited as hazardous would be a real innovation in both international labour law and Spanish law. The provision appears to target domestic work. Given that the proposed Convention refers to children, without exception, as persons under the age of 18, and that slavery, bonded labour and the like are mentioned in Articles of the proposed Convention, the criteria for determining which work is hazardous could be used as a way of "stigmatizing" domestic work as such. Moreover, since it refers to criminal conduct and child abuse, any inclusion of an activity or work under this provision may result in motives being imputed to the employers in these sectors.

Sweden. This Paragraph should be in the proposed Convention and should be expanded to cover not only work entailing physical danger but also work impeding the child's schooling or capable of jeopardizing the child's health or physical, mental, spiritual, moral or social development. The heading of this section should be "Hazardous and harmful work".

SAF. Considering the discussion of the Committee on Child Labour during the 1998 Session of the Conference, and the result that retained the text of this Paragraph in the proposed Recommendation, the SAF does not support including this Paragraph in the proposed Convention. This Paragraph can be broadened and the heading altered but it should remain in its entirety in the proposed Recommendation.

United States. Delete the words "or activity" and the phrase "and in identifying their existence". See comments under Article 3(d) of the proposed Convention.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

The major issue raised concerning Paragraph 3 is whether the types of work referred to in this Paragraph should be incorporated in the proposed Convention as examples of types of work which are likely to jeopardize the health, safety or morals of children. This has been discussed under Article 3 of the proposed Convention above. If some or all of the types of work in this Paragraph are put into the Convention, the list in the Convention would be considered as a minimum, while the Recommendation could go further.

The reference to "activity" or "activities" has been deleted to be consistent with the deletions in the Articles of the proposed Convention, and "in identifying their existence" has been modified to refer to identifying "where they exist", in accordance with the drafting change made to paragraph 2 of Article 4 of the proposed Convention. Those who wish to delete the "and identify their existence" provision in Article 4, paragraph 1, of the proposed Convention would also delete the reference here.

Finally, a suggestion has been taken up from the replies to add "or in confined spaces" to clause (b).

The question is raised by the Government of Canada whether some of the activities described would not necessarily constitute the worst forms of child labour if undertaken under safe and supervised conditions, with the appropriate legislation in place. As drafted, the provision says that in determining the types of work under Article 3(d) of the Convention, i.e. work likely to jeopardize the health, safety or morals of children, consideration should be given, as a minimum, to the work listed in clauses (a) to (e). Thus, consideration must be given to all the items in the Paragraph, although the list is not exhaustive and the implication is that national conditions will determine more specifically which work meets the criteria of Article 3. The original wording in the Office questionnaire had been that the determination "should include, among others" the work listed in clauses (a) to (e). Based on the replies to the questionnaire, the introductory part of the Paragraph was drafted more flexibly by stating "consideration" should be given, because some countries preferred the guidance to be less categorical. Giving "consideration to" implies that the list is not necessarily determinative, but must be taken into account in making the determination. Yet it is envisaged that most of the work listed would necessarily be deemed a worst form of child labour. This applies to all work underground, under water and at dangerous heights, for example. The wording in some of the clauses presents some absolutes and some flexibility. For example, work in an "unhealthy environment" with exposures "damaging" to children's health would necessarily be a worst form. However, if the factors of temperature and noise levels have been considered, but are determined not to be damaging to a child's health, the work would not have to be determined as a worst form. In clause (e), "work which does not allow for the possibility of returning home each day" is a factor which could make the work a worst form. The work might be in remote locations without sufficient access to emergency care. There might be insufficient adult supervision, or the child might be subject to abuse without his or her family knowing or without a means of contacting the family. A country could also consider the risk of the factor alone sufficient to determine all such work to be a worst form of child labour, or a worst form for all children under a certain age. However, exceptions could be envisaged in situations where the child's health, safety or morals are not jeopardized.

III. Implementation

4.(1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and immediate elimination of its worst forms.

(2) As far as possible and with due regard for the right to privacy, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity and status in employment.

Observations on Paragraph 4

Australia. Subparagraph (2): Supports the phrase "as far as possible" as it is crucial to this provision and advocates a degree of flexibility in relation to the collection of

information and data to allow for the capacity of Members to undertake this activity and the situations of different countries. Priority should however be given to the use of national resources to take action to eliminate the use of children in extreme forms of child labour. While member States would generally have sources of data that could provide some information in relation to child labour, there may be some difficulty in compiling reliable statistics given the current focus of most data collection. The level of data collection would also be difficult to achieve for extreme forms of child labour owing to their covert nature.

Canada. Subparagraph (1): The words "as far as possible" should be added to indicate that extensive data collection may be beyond the capacity of some Members. The emphasis should be on the collection itself, not only on how the data should be disaggregated. Since the proposed instrument addresses the worst forms of child labour, the Paragraph should be amended to ensure a focus on the worst forms of child labour. The subparagraph should thus read "As far as possible, detailed information and statistical data on the nature and extent of the worst forms of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for its prohibition and immediate elimination".

CEC. Accepts the Office's change.

Czech Republic. Subparagraph (1): It is necessary to distinguish between criminal activities and activities that violate other legislation.

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. Agrees that dividing the Paragraph into two parts makes the text clearer. A database on child labour will assist in setting realistic goals. Subparagraph (1) should stress the importance of providing information and making it more widely available.

TT and PT. While information and a database would be useful, ILO instruments are not the appropriate place for making such detailed provision for the gathering of information because of the fundamental disparities between the capacities of different countries to create databases.

France. CFDT. This Paragraph should include clear references concerning the need to compile and disseminate detailed information and statistical data.

Germany. Supports the changes made by the Office. In Paragraphs 4 to 6 the concept of "detailed information" is not clear. This would appear to mean more than just statistical data. Bearing in mind that the information could also mean personal data and it cannot be assumed that a uniform level of data protection will be ensured when communicating the data to the Office and making further use of it, this is a matter of some concern. To determine priorities and consider further action to achieve the objectives of the proposed Convention at the international level, it should be sufficient to collect and communicate statistical data. The use of these data for the purpose for which they were collected should be guaranteed, as well as the confidentiality of detailed particulars. Standard intervals should also be fixed for data collection. The following wording is therefore proposed: "(1) For determining priorities for national action for the abolition of child labour, its prohibition and the immediate elimination of its worst forms, statistical data on the nature and extent of child labour should be

collected. The statistics, which should be collected at regular intervals, should cover at least the following: sex; age; occupation; branch of economic activity; status in employment. (2) Detailed information on personal and material circumstances provided for statistical purposes should be kept confidential. The right to the protection of privacy should be guaranteed as far as possible. Statistical data should be communicated to the International Labour Office at regular intervals for the purposes of this Convention."

BDA. Subparagraph (1): Delete "for the abolition of child labour, in particular", since the subject of the proposed Recommendation is the "worst forms of child labour", not child labour in general.

DGB. This Paragraph should clearly indicate how important it is to collect and make available information on school attendance and registration of births to make it easier to identify child labour, especially in sectors in which child labour is least visible, for example domestic work.

Greece. Agrees to the changes made by the Office.

Ireland. ICTU. The Recommendation should include clear references to the importance of collecting this information and making it available to support the identification of where child labour exists (this is particularly useful in identifying where the least visible forms exist, for example domestic service).

Italy. CGIL, CISL and UIL. References should be inserted to the gathering of information concerning school drop-out rates and the registration of births to make it easier to identify the phenomenon and the areas in which child labour is more prevalent, and to help make hidden work more visible.

Mexico. Insert a new title "Data and statistics" before this provision. Insert "immediate" before "prohibition" and replace "immediate" with "progressive".

Netherlands. Agrees with the changes made to the text by the Office. The Government is open to discussing the proposal made by the FNV below.

FNV. Include a clear reference to the importance of collecting information about school attendance and birth registration and making it available to support the identification of the existence of child labour.

Portugal. There is no objection.

CIP. Subparagraph (1) should relate only to the worst forms of child labour, since this is the subject of the proposed instruments.

Senegal. In the French text, the expression "*statut professionnel*" is more appropriate.

South Africa. Subparagraph (2): It may be more appropriate to refer to "age" rather than "age group". The addition of the words "school attendance" as raised in the first discussion would also be supported.

Spain. Subparagraph (1): Insert the words "the worst forms of" after "abolition of" and before "child labour".

Tunisia. In the French version of the text, the Government favours the term "*statut professionnel*" instead of "*situation dans la profession*".

United Kingdom. The suggestions by the Office are acceptable.

United States. There is no difficulty with the modifications made by the Office. As noted above, "immediate elimination" should be replaced with "effective elimination".

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Subparagraph (2): The categories of information should include birth registration, school attendance, and notification of violations. This information can be an extremely important tool in identifying the location of the worst forms of child labour.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

Paragraphs 4, 5 and 6 cover the collection and communication to the ILO of information and statistical data on the nature and extent of child labour and on violations of national provisions on the worst forms of child labour. Some concern is expressed about the collection of information other than statistical data and the implications for privacy rights in all three Paragraphs. To avoid repeating the reference to regard for privacy in each provision, all the provisions on compilation of data have been combined into Paragraph 4, with the text of former Paragraph 5 becoming subparagraph (3). "Due regard to the right to privacy" has been placed in a new Paragraph 5 in reference to the compilation and processing of information and data under Paragraph 4. The term "processing" refers to all handling of the data, including its collection, disaggregation and communication.

The second subparagraph of Paragraph 4 refers to "statistical data ... disaggregated by ... status in employment". The French translation of this term had been "*situation dans la profession*", consistent with the Labour Statistics Recommendation, 1985 (No. 170), but was changed by the Drafting Committee to "*statut professionnel*" on the clear understanding that it did not change the meaning, but was a better reflection of what was meant. However, the French translation has been changed back to "*situation dans la profession*" to avoid possible confusion as it is the customary term among national and international statistical agencies and is consistent with official documents and ILO standards. The Sixteenth International Conference of Labour Statisticians, held in October 1998, also recommended that the French term not be changed.

Several workers' organizations suggest that a clear reference should be made to the collection of information about school attendance and birth registration as a tool for identifying where the worst forms of child labour exist. Several other specific suggestions are also made for consideration by the Conference.

5. Members should compile and update relevant data concerning violations of national provisions for the prohibition and immediate elimination of the worst forms of child labour.

Observations on Paragraph 5

Canada. Approves of this Paragraph, provided that it is indicated that compilation is done in accordance with national law regarding privacy rights.

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. TT and PT. Child labour standards are set at the national level. A database on the infringement of such national standards cannot be based on any sort of information gathering other than information on the infringement of such standards. As the worst forms of child labour are most common in countries with the weakest capacity for gathering data, this could hamper the reliability of a database.

Germany. See observations on Paragraph 4.

Kenya. COTU. It is doubtful whether governments would compile and update relevant data concerning violations for the purpose of giving effect to the provisions of the proposed Convention. This can best be executed by the concerned workers' organizations.

Mexico. Replace "violations of national provisions for" by "the obstacles to". Insert "immediate" before "prohibition" and replace "immediate" with "progressive" elimination.

United States. "Immediate elimination" should be replaced with "effective elimination". Otherwise, supports the Paragraph as presently drafted.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

See comments under Paragraph 4.

6. The information compiled under Paragraphs 4 and 5 should be communicated to the International Labour Office.

Observations on Paragraph 6

Canada. The question of privacy rights should be included. Additional information is required as to whether the ILO intends to disclose this information and, if so, for what purposes.

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. TT and PT. See comments under Paragraphs 4 and 5.

Germany. See observations on Paragraph 4.

Kenya. COTU. See comments on Paragraph 5.

Mexico. Insert at the end "in order to contribute to the identification of the types and locations of the worst forms of child labour".

Sweden. Insert "on a regular basis" at the end.

Syrian Arab Republic. Ministry of Industry. There is no reason for including this Paragraph as member States have sovereign rights concerning the implementation of

the proposed Convention and Recommendation, and it is the State that is responsible for the elimination of the worst forms of child labour in its territory. The ILO's role is simply to provide ratifying countries with assistance upon request. The proposed Convention could set out the joint responsibilities of rich and poor countries in achieving this.

United States. Supports the Paragraph as presently drafted.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

A suggestion in the comments has been taken up to provide that the required communication of information to the ILO be "on a regular basis". See also comments under Paragraph 4.

7. Members should establish or designate appropriate national mechanisms to monitor the application of national provisions for the prohibition and immediate elimination of the worst forms of child labour after consulting employers' and workers' organizations and, as appropriate, other concerned groups.

Observations on Paragraph 7

Canada. Add "and persons" after "other concerned groups", as there are individuals with extensive expertise in child labour who may not necessarily be attached to a group.

Ecuador. Agrees.

El Salvador. Agrees.

Estonia. Prefers using the phrase "the most representative organizations of employers and workers".

Mexico. Delete, since under Mexico's proposal for a Recommendation only, it would already be incorporated with the language of Article 5 of the proposed Convention. See comments under Article 5 above.

Portugal. CIP. Delete. This is a matter that should be left to member States.

Sudan. Insert "the most representative" before "employers' and workers' organizations".

United States. "Immediate" should be replaced with "effective". Otherwise, supports the Paragraph as presently drafted.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

An editorial change has been introduced by replacing "after consulting" with "after consultation with" to conform to similar phrases elsewhere in the proposed instruments.

8. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and immediate elimination of the worst forms of child labour cooperate and coordinate their activities.

Observations on Paragraph 8

Canada. CEC. Agrees with the insertion of "national".

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. Agrees with including "national" as it makes the text more precise.

Germany. Supports the insertion of "national".

Greece. Agrees to the change made by the Office.

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Insert after Article 5, which should be a Paragraph under Mexico's proposal for a Recommendation only. Delete the phrase "for implementing national provisions".

Netherlands. Agrees with the change made by the Office.

Portugal. There is no objection.

CIP. Delete. This is a matter that should be left to member States.

Spain. Agrees.

United Kingdom. The suggestions by the Office are acceptable.

United States. "Immediate" should be replaced with "effective". Otherwise, supports the Paragraph as presently drafted.

Venezuela. It should be made clear that "cooperate and coordinate" refer to "among themselves".

CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

The words "with each other" have been inserted in the third line after "cooperate", as a purely editorial change to make the sentence read better.

9. Members should determine the persons who should comply with the provisions of national laws or regulations.

Observations on Paragraph 9

Argentina. Agrees with the Office's proposal, provided "shall" is used instead of "should".

Belgium. Supports the Office's proposal.

Botswana. Agrees with the changes proposed by the Office.

Bulgaria. Suggests the following wording: "National laws and regulations or the competent authorities shall designate the persons responsible for coordination with national provisions for the prohibition and immediate elimination of the worst forms of child labour".

Canada. The Paragraph is awkward if the purpose of the proposed Convention is to criminalize specific forms of behaviour, since in the context of criminal offences, everyone (not only certain persons) has to comply with the law. Despite the Office's proposal, the Paragraph should be removed.

CEC. Agrees with the Office's critique, but asks whether the Office's proposal should be expanded to include "and enforcement" after "compliance".

Chile. CPC. It is not appropriate to indicate that each Member should determine the persons who should comply with the provisions of national laws or regulations, since the latter must be binding on all the country's inhabitants without distinction, particularly concerning child labour.

CONUPIA. Reference should be made to the types of penal and criminal subjects that might be concerned, e.g. international corporations, international criminal networks.

Denmark. Supports the Office's proposal.

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. Supports the Office's proposal.

Germany. Strongly supports the Office's proposal as the alternative makes the point clearly. Perhaps the following wording would be even clearer: "National laws or regulations or the competent authority should determine which persons are responsible for compliance ...".

BDA. Redraft as: "The competent national authorities should designate the persons to whom national provisions for the prohibition and immediate elimination of the worst forms of child labour are addressed", as the current formulation could be misinterpreted.

Greece. Agrees to the change suggested by the Office.

Haiti. The proposed text does not appear as a concrete measure.

Italy: Agrees with the Office's assessment. The intention of the text is to affirm that each State must determine responsibility for violations of the Convention and of national legislation. Therefore, without prejudice to the obligation for all citizens of a State to respect the law, this Paragraph should be amended so that it is each State that clearly determines who is responsible for perpetrating the violations and, consequently, liable for all the corresponding penal and other sanctions.

CONFCOMMERCIO. Agrees with the change proposed by the Office.

Japan. Supports the Office's proposal.

Jordan. Amman Chamber of Industry. Report IV(1) referred to the employer's responsibility not to employ children in relation to this Paragraph. Jordanian employers in general refrain from resorting to child labour, except in small industries

and handicrafts where children work with their parents. This is a tradition found in developing countries in general, and it would be difficult to ban totally, especially as the work children are employed in is "usual" forms of employment and can hardly be described as "the worst forms of child labour".

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Delete.

Netherlands. Will further study the proposal made by the Office.

New Zealand. Agrees with the formulation proposed by the Office.

Peru. The function of ensuring compliance with the provisions of national laws or regulations should refer to institutions, not persons, since the intention is to determine who is responsible under the law in the event of non-compliance, i.e. the institutions which would impose sanctions on persons who fail to comply with, or violate, the laws and regulations on child labour.

Portugal. Has no objection.

Senegal. There must be joint responsibility of the State, parents and employers' and workers' organizations in whatever action is taken, so that the synergy between them can be used to combat child labour effectively.

South Africa. Supports the Office's proposal to make the Paragraph clearer.

BSA. Fails to see the purpose of the current wording since legislation has to be complied with by everyone. The Office's proposed alternative wording seems acceptable.

Spain. Supports the Office's proposal.

CEOE. Supports the formulation proposed by the Office.

Sweden. There is an advantage in using the same wording as Convention No. 138. It should read: "National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention".

Switzerland. Agrees with the Office's proposal amended to read as follows: "National laws or regulations or the competent authority should define the persons responsible for compliance with national provisions giving effect to the Convention". This sentence is similar to that contained in Article 9, paragraph 2, of Convention No. 138.

UPS, CSC/CNG and FSE/VSA. Agree with the Office's proposal.

Syrian Arab Republic. Add the term "and authorities" after "persons", and "on child labour" to the end of the sentence.

Ministry of Industry. This Paragraph should be reworded to read: "Member countries shall identify those persons responsible for the violations of its laws and regulations in connection with the implementation of the Convention", because compliance with laws and regulations is the obligation of nationals of a State and not restricted to a specific group of individuals.

Tunisia. Agrees with the Office's proposal.

United Kingdom. The suggestions by the Office are acceptable.

United States. Accepts the Office's proposal to clarify this Paragraph. "Immediate elimination" should be replaced with "effective elimination".

Venezuela. The meaning of this Paragraph is not clear.

CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

This Paragraph was added to the proposed Recommendation during the first discussion after a similar provision had been deleted from the proposed Convention. As drafted, it seemed to require Members to make the obvious determination that all persons should comply with national laws and regulations. Since the original provision in the proposed Convention had been based on language in Article 9, paragraph 2, of Convention No. 138,[14] the Office suggested in Report IV(1) that the provision be revised accordingly. The comments support this suggestion, although some prefer its deletion. The Paragraph has been redrafted with a slight modification with respect to the proposal in Report IV(1) to provide that national laws or regulations or the competent authority should determine the "persons to be held responsible in the event of non-compliance" with national provisions for the prohibition and immediate elimination of the worst forms of child labour.

10. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and immediate elimination of the worst forms of child labour by:

(a) gathering and exchanging information concerning criminal offences, including those involving international networks;

(b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illegal activities, for prostitution, for the production of pornography or for pornographic performances;

(c) registering perpetrators of such offences.

Observations on Paragraph 10

Australia. A registration of perpetrators of offences is proposed but should only apply to proven offenders, not to those people who are merely suspected of perpetrating an offence. The use of the register is unclear in this provision. This raises concerns about purpose and content. The organization and content of the register should be articulated more clearly to avoid any possible breach of privacy rights and other issues such as possible commercial misuse.

Canada. Clause (a): This raises issues related to privacy and human rights. See under Paragraphs 5 and 6. It is questioned whether there should be, in addition, a broader sharing of information rather than only that related to criminal offences;

[14] Article 9, paragraph 2, of Convention No. 138 reads as follows: "National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention."

such as exchanges on the effectiveness of measures implemented to prevent, investigate and prohibit the worst forms of child labour. Clause (c): Opposes this clause. Further information is required regarding what is meant by "registering". What types of offences would be registered – only criminal, or civil, administrative, penal or labour infractions? What kind of information must be registered, information based on a finding of the commission of the offence or also information based on a suspicion/charge of the commission of the offence? Who would have access to such a registry?

Ecuador. Agrees.

El Salvador. Agrees.

Finland. TT and PT. Clause (a): International cooperation and exchange of information and experiences are necessary to eliminate the worst forms of child labour. However, the precise forms of cooperation and assistance will need to be determined according to individual circumstances and requirements. Thus, no attempt should be made to provide a general definition even in the form of a Recommendation. Clause (b): International cooperation could be useful in combating crime, but it will need to be based on separate arrangements between States. This applies to crimes related to the abuse of children as well. Clause (c): See comments under Paragraph 4.

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Replace "the prohibition and elimination of the worst forms of child labour" by "the criminal activities described in Paragraph 4(1) of this Recommendation".

Netherlands. Clause (b): The word "illegal" can be replaced by "illicit" as in Article 3 of the proposed Convention.

Sweden. Delete ", in so far as it is compatible with national law,".

Syrian Arab Republic. Simplify to read: "Member States, in so far as it is compatible with national law, should cooperate with international efforts aimed at the prohibition and immediate elimination of the worst forms of child labour".

Ministry of Industry. The beginning of the Paragraph should be reworded to read: "Members should cooperate with each other in undertaking efforts aimed at ...". Clause (b): The wording implies that member States must detect and prosecute persons taking part in the sale and trafficking of children and that detection should be undertaken inside and outside their territories. As this is a matter that falls within the international domain, this should be clearly set out while ensuring that the contents of this Paragraph do not contradict the provisions of Article 8 of the proposed Convention and Paragraph 14(d) of the proposed Recommendation. The expression "prosecuting those involved" does not have a compulsory nature; it should therefore be reworded to give it such a meaning. In so doing it shall become a form of extradition treaty between member States. See comment under Paragraph 15.

United States. Accepts as presently drafted.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

The phrase in the first part of the Paragraph, "in so far as it is compatible with national law", was meant to ensure that the cooperation Members are invited to undertake is subject to national law, for example, on privacy or other human rights protection, a concern raised again in the comments by some governments. Concerning a question about the meaning of "perpetrators", the term as defined in *Black's Law Dictionary* [15] generally denotes the person who actually commits a crime. Again, any particularities of national law such as prerequisite convictions or procedures will be decisive. Concerning the international efforts described, countries decide whether to cooperate and determine whether such cooperation is compatible with their law.

The reference to "illegal" activities in clause (b) has been changed to "illicit" to conform to the changes in Article 3(c) of the proposed Convention. Several governments raise questions about the registration referred to in clause (c). The envisaged use of such a register would be for law enforcement agencies to be able to track cross-border movements of known offenders and alert local authorities. This provision was also drafted bearing in mind the work of the International Criminal Police Organization – Interpol, which works through its member countries to collect data on offences against minors and to promote mutual assistance among all criminal police authorities, including the development of registers of offenders.

The Conference might wish to take up another issue relevant to trafficking and consider addressing or referring to specific obligations of countries related to their status as "sending", "receiving" or "transit" countries of trafficked children. Special cooperation is required to assist children outside their own countries and to clarify jurisdictional issues between countries from and to which children are trafficked. For example, children are trafficked from the villages of one country to brothels in the big cities of another. The issues of the responsibilities that should be assumed by the authorities of the two countries in rescuing the children, identifying them and providing assistance for their safe return are difficult and sensitive. One possibility is to add a reference to clarifying obligations and responsibilities of countries from, through, and to which children are trafficked or to provide that such countries should cooperate with each other in ensuring that the victims are detected, rescued and appropriately assisted.

11. Members should provide that the following worst forms of child labour are criminal offences:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and

(c) the use, procuring or offering of a child for illegal activities, in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties.

[15] H.C. Black: *Black's Law Dictionary* (St. Paul, Minnesota, West Publishing Co., 1990).

Observations on Paragraph 11

Belgium. Agrees with the simplified formulation suggested for Article 3 of the proposed Convention.

Canada. CEC. See comments under Article 3(c).

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. TT and PT. Applying criminal sanctions to those engaging in the worst forms of child labour could in principle be a good way to prevent these forms of abuse. Implementation of the responsibilities derived from ILO instruments is, however, a matter for the national authorities of each country. Therefore, Paragraph 11 should be replaced by the text of Article 7 of the proposed Convention.

Germany. BDA. For the sake of simplicity, this should refer to the forms of child labour listed in Article 3(a) to (c) of the proposed Convention.

Greece. Agrees to the change proposed by the Office.

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Delete, since Mexico proposes a Recommendation only and proposes to combine this with the provisions of Article 3 of the proposed Convention. See comments under Article 3.

Netherlands. The word "illegal" can be replaced by "illicit" as in Article 3 of the proposed Convention.

Portugal. There is no objection.
CIP. The definition of offences should be left to the legislation of member States.

South Africa. BSA. Clause (c): The comment on the words "illegal" and "illicit" under Article 3 above applies.

Spain. Replace "criminal" by "illicit".

Switzerland. Favours a reference to the use of children in armed conflicts in both Article 3 of the proposed Convention and Paragraph 11 of the proposed Recommendation.

Syrian Arab Republic. Clause (a): The word "any" should be substituted for "all".

United Kingdom. The suggestions by the Office are acceptable.

United States. Clauses (a) and (b): Accepts as presently drafted. Clause (c): Revise to be consistent with the suggested revision of Article 3(c) of the proposed Convention as follows: "(c) the use, procuring or offering of a child for illegal activities, as defined in the relevant treaties, including the production and trafficking of narcotic drugs and psychotropic substances;".

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

Clause (c) has been revised to be consistent with the changes made to Article 3(c) of the proposed Convention.

12. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and immediate elimination of any type of work or activity referred to in Article 3(d) of the Convention.

Observations on Paragraph 12

Belarus. The Paragraph should read: "Members should ensure that penalties are applied for violations of the national provisions for the immediate elimination of any type of work or activity referred to in Article 3(d) of the Convention, including, where appropriate, criminal penalties."

Canada. Recommends the inclusion of a broader range of legal means that a country should deploy to eliminate practices identified in Article 3(d) of the proposed Convention and proposes that the Paragraph should read: "Members should ensure that civil, administrative, criminal or labour penalties, as appropriate, are applied ...".

Ecuador. Agrees.

El Salvador. Agrees with the proposed text.

Finland. TT and PT. See comments under Article 7 and Paragraph 11.

Germany. BDA. Delete or tone down as the current formulation is too sweeping, even for cases of violations of national provisions for the prohibition and elimination of each of the forms of child labour referred to in Article 3(d).

Japan. Replace "penalties" with "sanctions" as "sanctions" has a broader meaning and it would be consistent with Article 7 of the Convention, which refers to penal sanctions or other sanctions.

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Delete, since under Mexico's proposal for a Recommendation only, it is suggested that this be covered under a revised text of Article 7.

Portugal. CIP. The definition of the types of work likely to jeopardize the health, safety or morals of children should be left to the legislation of member States.

Sudan. Replace "immediate elimination" with "measures to be taken for the immediate elimination".

Syrian Arab Republic. Redraft to read: "Members should ensure that criminal penalties are applied for violations of national provisions aimed at the prohibition and immediate elimination of the worst forms of child labour".

United States. Accepts the Paragraph, with the substitution of "effective" for "immediate".

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

The reference to "or activity" has been removed in line with its deletion from Article 3(d) of the proposed Convention.

13. Members should also provide for other remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and immediate elimination of the worst forms of child labour.

Observations on Paragraph 13

Ecuador. Agrees.

El Salvador. Agrees.

Kenya. COTU. Consultation with organizations of employers and workers should be provided for.

Mexico. Under Mexico's proposal for a Recommendation only, this would be moved up under a heading "Other measures". Replace "ensure the effective enforcement of national provisions for" by "supervise".

Portugal. CIP. This should be left to the legislation of member States.

United States. Accepts the Paragraph, with the substitution of "effective" for "immediate".

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

No changes have been introduced.

14. Other measures aimed at the prohibition and immediate elimination of the worst forms of child labour might include the following:

(a) informing and sensitizing the general public, including national and local political leaders, parliamentarians and the judiciary;

(b) involving and training employers' and workers' organizations and civic organizations;

(c) providing appropriate training for concerned government officials, especially inspectors and law enforcement officials, and for other relevant professionals;

(d) providing for the prosecution in their own country of the Members' nationals who commit offences under national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;

(e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;

(f) giving publicity to best practices and to legal or other provisions on child labour in the different languages or dialects;

(g) establishing special complaints procedures and making provisions to protect those who legitimately expose violations of the provisions of the Convention from discrimination and reprisals, as well as establishing help lines and ombudspersons.

Observations on Paragraph 14

Belarus. Clause (b): Draft as: "involving employers' and workers' organizations and civic organizations in this work and affording them the possibility of obtaining training in this field". Clause (d): Insert "in their own country and" before "even when

these offences are committed in another country". Clause (e): Draft as: "simplifying the process of carrying out legal and administrative procedures in dealing with related matters, with the aim of speeding them up".

Canada. Clause (d): Opposes this clause. Since the proposed Convention does not create criminal offences, certain practices could be made criminal in some countries but not others, thereby preventing the application of the dual criminality standard necessary for extradition purposes and, in most cases, prosecutions undertaken in a country for offences committed in another. Further information regarding this provision is required. Clause (e): This should be worded more strongly by clarifying the purpose of these procedures.

CLC. There should be a reference to special supervision of enterprises which have used the worst forms of child labour, and, in the case of persistent violations, consideration should be given to the revoking of permits to operate. The issue of what obligations there should be on governments, employers or workers, whether these be "codes of conduct", best practices or labelling initiatives, will require further discussion in the Committee.

Czech Republic. Czech-Moravian Chamber of Trade Unions (CMK OS). Undertakings found to have engaged in the worst forms of child exploitation should be placed under specific supervision, and if the practices continue, the establishments should be closed. Governments should promote a meaningful dialogue between the social partners with a view to achieving full implementation of the proposed Convention and proposed Recommendation.

Ecuador. Agrees.

El Salvador. Clause (d): Delete.

Finland. TT and PT. Clause (d): Delete. See comments under Paragraphs 10(b) and 11.

SAK, STTK and AKAVA. Include monitoring of companies with a record of using the worst forms of child labour. It should be possible to intervene in company operations in cases of sustained violation of the terms of the proposed Convention. Governments should also support the employers' and workers' organizations whose activities further the realization of the aims of the proposed Convention.

France. CFDT. This Paragraph should include a specific reference to special supervision of enterprises that use the worst forms of child labour. It should also indicate that governments would encourage possible negotiations between employers' and workers' organizations aiming to support the objectives of the proposed Convention. This may include, for example, the adoption of codes of conduct.

Germany. Clause (d): This requirement cannot be incorporated into German law automatically, since under the Penal Code, a German citizen may only be prosecuted for an offence committed abroad when it is punishable in the country where it was committed. The only exceptions of relevance here are human trafficking and aggravated human trafficking, which are punishable irrespective of the law of the country in which they were committed. The extension of the offences under the Penal Code as a consequence of the proposed Recommendation would disrupt the classification in the Penal Code, since all assault and sexual offences listed in the Penal Code would have to be incorporated, in so far as the offence is committed against children and adoles-

cents. Therefore add "and, except in the case of human trafficking, are punishable in that country" after "committed in another country".

BDA. Clause (e): Formulate in more concrete terms as it is far too general and impracticable in this context.

DGB. Presses again for inclusion of a reference to special supervision of enterprises in which the worst forms of child labour have been identified, and in the case of repeated offences, consider withdrawing operating licenses. There should be a reference to codes of conduct and a provision should be included to the effect that governments should support negotiations between employers' and workers' organizations on the implementation of the objectives of the proposed Convention.

Ireland. ICTU. Include a reference to special supervision of enterprises which have used the worst forms of child labour, and in cases of persistent violations, to consideration to be given to revoking of permits to operate. Include a reference to codes of conduct. Include a provision to the effect that governments should support negotiations between employers' and workers' organizations aimed at supporting the objectives of the Convention.

Italy. CGIL, CISL and UIL. Provision should be made for special monitoring of enterprises that have used the worst forms of child labour, and in the case of persistent violations of the standard, provision could be made for the suspension or closure of the actual production activity. Provision should also be made for governments to support employers' and trade union organizations in their negotiations to draw up codes of conduct to promote the implementation of the Convention.

Japan. Clause (a): Informing and sensitizing the judiciary is an issue that should vary depending on the national judicial system. Therefore it should not be recommended to all countries uniformly.

NIKKEIREN. Clause (d): This could be contrary to the criminal law or criminal procedure law of member States. Therefore, add "as far as compatible with the national legislation".

JTUC-RENGO. Clause (a): Supports the proposed text.

Jordan. Amman Chamber of Industry. Labour inspectors should be required to supervise child labour, and a special inspectorate could be set up to monitor the situation and prevent abuses of child labour.

Kenya. COTU. Clause (c): Appropriate training should also target shop stewards who operate at the local level as they can act as "trouble-shooters". To do this, they will need empowerment through relevant legislation. This is consistent with Article 1 of the proposed Convention and Paragraphs 4, 5 and 6 of the proposed Recommendation. Add a new clause: "Advocating that member States make provision for second-generation rights" as these are basic rights and include the right to proper health, education, food, water, shelter, culture and credit. Poverty, which is an outcome of bad politics or bad governance, is prevalent in those countries where certain groups of people have no access to or are deprived of these rights. Where good politics exist there is also good governance, creating an environment that enables a mother to feed her children, to keep them in good health and to send them to school.

Mauritius. Include an additional clause (h): "providing adequate social security support to deprived children and families in distress to enable them to meet basic subsistence needs".

Mexico. Clause (d): Delete. Clause (g): Replace "violations of the provisions of the Convention" by "the situations described in Paragraphs 2 and 3(1) of this Recommendation" [Article 3]. Replace "complaints procedures" with "procedures for submitting complaints to the competent national authorities".

Netherlands. According to the FNV, the proposed Recommendation should include a provision to the effect that governments should support negotiations between employers' and workers' organizations aimed at supporting the objectives of the proposed Convention. The Government is willing to consider this proposal. Clause (d): Taking into account the double criminality rule, where appropriate, the proposed text can be supported if "Members' nationals" is interpreted as "individuals, companies and their subcontractors and other legal entities".

Portugal. CIP. Clause (d): The possibility of applying national standards relating to offences to foreign citizens in their own country is a matter which should be governed by private international law of member States.

South Africa. Clauses (b) and (c): It may be more appropriate to include the relevant professionals listed in clause (c) in clause (b) instead since they should also be "involved" as well as "trained". Clause (f): Giving publicity to best practices and ensuring that legal or other provisions are publicized in different languages should be divided into two separate clauses.

Spain. Clause (d): Although this clause poses problems of international criminal law that are outside the Government's remit, the differences between countries as to what work is considered hazardous are enormous. There is no common international list of hazardous work and activities.

Sudan. Clause (a): Add "especially children and their families" to the end of the clause.

Syrian Arab Republic. Clause (c): Replace "for other relevant" with "other". Clause (d): Replace "providing for the prosecution in their own country of the Members' nationals" with "nationals must be prosecuted", to strengthen the text of the proposed Recommendation and make it enforceable.

Ministry of Industry. Clause (g): There is no need for the word "legitimately" because establishing procedures for the protection of those persons who expose violations of the provisions of the proposed Convention is compulsory, whatever the circumstances that lead to the discovery of the violation, and could only be done legitimately.

United States. Accepts the Paragraph, with the substitution of "effective" for "immediate".

AFL-CIO. Add a new clause on the need for special supervision of enterprises known to wilfully and repeatedly use the worst forms of child labour, and the need, in cases of repeat violations, to have available an array of penalties ranging from debarment from eligibility for government contracts to revocation of licenses and permits to operate a business. Add a new clause for codes of conduct, calling for governments to support negotiations between employers' and workers' organizations aimed at yielding supplementary means of supporting and advancing the goals of the proposed Convention, such as negotiations over enforceable corporate or industry codes of conduct that include provisions to prohibit child labour and safeguard freedom of associa-

tion and the right to organize and bargain collectively. Add a new clause for boosting school attendance, urging that at least one free or subsidized meal per day be provided to children as an incentive and effective means to remove them from the worst forms of work and to redress the underlying conditions that often contribute to the spread of child labour. Add a new clause on government procurement preferences that urges governments to adopt procurement preferences for government contracts that reward companies which are reliable in not using child labour. The idea is to use the considerable purchasing power of national governments within their own respective national economies to take demonstrable action themselves to curb child labour.

Venezuela. CTV. The word "might" ought to be replaced by "must" to make it clear that it is an obligation.

Office commentary

Most of the comments on this Paragraph relate to clause (d), which is aimed at allowing a country to prosecute its citizens for a crime committed outside the country, even if the violation is not an offence in the country in which it is committed. A few of the replies point to difficulties because some countries have a "dual criminality" requirement, i.e. the violation has to be a crime where it is committed as well as in the offenders' country of origin. While the measure is not viewed as a substitute for effective national law enforcement, it is presented as a possible tool to fill a gap where perpetrators escape out of the country in which the crime is committed or the crime is not subject to prosecution where committed. Such legislation can be helpful, especially in view of the international aspects of the worst forms of child labour, such as child sex tourism. Because the Paragraph is worded very flexibly – "might include" the listed items – the national context and considerations are taken into account.

Following a suggestion in the replies, clause (f) has been divided into two separate clauses, now clauses (f) and (g). Giving publicity to legal provisions is intended to make those that the law protects more aware, while the publicity given to best practices on child labour can have a different and wider audience. The latter had been added by an amendment and it is not clear whether it was expected that such information would also need to be translated into the different languages or dialects of a country.

In clause (h), formerly clause (g), "or points of contact" has been added to cover the situation where telephone lines or telephones might not be prevalent, but where other points of contact could be designated to assist those in need.

Numerous trade unions suggested additions to the Paragraph such as monitoring of companies which have engaged in the worst forms of child labour, providing for the possibility of suspending or closing operations for sustained or repeated violations, providing that governments should support negotiations between employers' and workers' organizations concerning implementation of the objectives of the Convention, which might include codes of conduct, and urging governments to give preference in procurement policies to companies that do not use child labour. These and other proposals are for the Conference to consider.

15. International cooperation or assistance among Members for the prohibition and immediate elimination of the worst forms of child labour should include:

(a) mobilizing resources for national or international programmes;

(b) mutual legal assistance;

(c) technical assistance including the exchange of information.

Observations on Paragraph 15

Belarus. Clause (a) should be drafted as "mobilizing resources for designing and implementing national and international programmes".

Canada. Other examples of technical cooperation could include: collaboration in the drawing up and implementation of national plans of action to combat child labour; support to developing countries in developing national information collection, in research capacity and monitoring systems, such as the ILO's Statistical Information and Monitoring Programme on Child Labour (SIMPOC) under IPEC; collaboration in the development of tools to determine the incidence and root causes of child labour, and for planning action and measuring progress in programme intervention, including basic education; and support to and participation with multilateral organizations, international financial institutions and NGOs in their work to eliminate child labour.

Czech Republic. CMK OS. Governments should be active in promoting cooperation between the ILO and other relevant international organizations by asking them to fully support the full implementation of the proposed Convention and proposed Recommendation.

Ecuador. Agrees.

Egypt. Egyptian Trade Union Federation. Clause (a): Insert "particularly in the areas of poverty alleviation, fighting unemployment and education" at the end of the clause.

Finland. TT and PT. Replace "should" with "might".

France. See comments under Article 8 of the proposed Convention.

Germany. DGB. See comments under Article 8.

Ireland. ICTU. See comments under Article 8.

Japan. A list of the types of international cooperation and assistance should be included in the Convention.

Mexico. Insert "immediate" before "prohibition" and replace "immediate" with "progressive" elimination.

Portugal. CIP. Sees no reason for such a provision.

Sri Lanka. Most of the separatist or militant groups involved in armed conflicts with national armed forces are enlisting the services of child combatants. These groups, in some instances, are assisted overtly or covertly in various forms by member States which eventually contribute to the escalation of such crimes. Thus, it is imperative to condemn such acts and withhold any form of assistance to such groups. It is thus proposed to add a new clause (d): "condemning engaging children as child combatants, and refraining from extending any form of assistance to groups or States involved in such form of child labour."

Syrian Arab Republic. Remove the reference to "should" to give force to the wording, and include cooperation and international assistance between member States to prohibit and eliminate the worst forms of child labour.

Ministry of Industry. Move to follow Paragraph 10 of the proposed Recommendation as they are closely connected.

United States. Accepts the Paragraph, with the substitution of "effective" for "immediate".

AFL-CIO. Add a new clause for international cooperation, requiring the ILO to assist Members in securing the cooperation of the International Monetary Fund, the World Bank, and other relevant international institutions to ensure that their programmes and projects are consi tent with the proposed Convention and its fullest implementation. Additional language should also be added regarding the need for legal and judicial cooperation, including provision for governments to share information about possible violations of the proposed Convention with other Members and the ILO, wherever they occur.

Venezuela. CTV. The word "should" ought to be replaced by "must" to make it clear that it is an obligation and not just a possibility.

Office commentary

No changes have been made to this Paragraph. Several suggestions, however, for the designation of further types of international cooperation and assistance have been made for consideration by the Conference.

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